

**ALCOHOLIC BEVERAGE CODE**  
**Chapter 1. General Provisions**

**§ 1.04. Definitions**

In this code:

- (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.
- (2) "Consignment sale" means:
  - (A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;
  - (B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;
  - (C) the delivery of alcoholic beverages to a factor or broker;
  - (D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;
  - (E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or
  - (F) any other type of transaction which may legally be construed as a consignment sale.
- (3) "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them, and includes spirit coolers that may have an alcoholic content as low as four percent alcohol by volume and that contain plain, sparkling, or carbonated water and may also contain one or more natural or artificial blending or flavoring ingredients.
- (4) "Illicit beverage" means an alcoholic beverage:
  - (A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;
  - (B) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or
  - (C) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.
- (5) "Liquor" means any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barreteago, is prima facie evidence that it is liquor.
- (6) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.
- (7) "Wine and vinous liquor" means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers.
- (8) "Hotel" means the premises of an establishment:
  - (A) where, in consideration of payment, travelers are furnished food and lodging;
  - (B) in which are located at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; and
  - (C) which operates a regular dining room constantly frequented by customers each day.
- (9) "Applicant" means a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit.
- (10) "Commission" means the Texas Alcoholic Beverage Commission.
- (11) "Permittee" means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.
- (12) "Ale" or "malt liquor" means a malt beverage containing more than four percent of alcohol by weight.
- (13) "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.
- (14) "Barrel" means, as a standard of measure, a quantity of beer equal to 31 standard gallons.
- (15) "Beer" means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.
- (16) "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.
- (17) "Manufacturer" means a person engaged in the manufacture or brewing of beer, whether located inside or outside the state.
- (18) "Original package," as applied to beer, means a container holding one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.
- (19) "Premises" has the meaning given it in Section 11.49 of this code.
- (20) "Citizen of Texas" and "citizen of this state" mean a person who is a citizen of both the United States and Texas.

- (21) "Minibar" means a closed container in a hotel guestroom with access to the interior of the container restricted by a locking device which requires the use of a key, magnetic card, or similar device.
- (22) "Minibar key" means the key, magnetic card, or similar device which permits access to the interior of a minibar.
- (23) "Guestroom" means a sleeping room, including any adjacent private living area, in a hotel which is rented to guests for their use as an overnight accommodation.
- (24) "Wine cooler" means an alcoholic beverage consisting of vinous liquor plus plain, sparkling, or carbonated water and which may also contain one or more natural or artificial blending or flavoring ingredients. A wine cooler may have an alcohol content as low as one-half of one percent by volume.

## ALCOHOLIC BEVERAGE CODE

### Chapter 106. Provisions Relating to Age

#### § 106.01. Definition

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

#### § 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.

#### § 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.

#### § 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 proof of identification that contains a physical description and photograph consistent with the minor's [his] appearance, purports to establish that the minor is 21 years of age or older, and was issued by a governmental agency. The proof of identification may include a driver's license or identification card issued by the Department of Public Safety, a passport, or a military identification card. An offense under this section is a Class A misdemeanor.

#### § 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.
- (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.

#### § 106.041. DRIVING OR OPERATING WATERCRAFT UNDER THE INFLUENCE OF ALCOHOL BY MINOR.

- (a) A minor commits an offense if the minor operates a motor vehicle in a public place or a watercraft 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, 49.045, or 49.06 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.
  - (4) "Watercraft" has the meaning assigned by Section 49.01, Penal Code

#### **§ 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.
- (d) 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.

#### **§ 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 makes available an alcoholic beverage to a minor with criminal negligence.
- (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.
- (d) A judge, acting under Article 42.12, Code of Criminal Procedure, who places a defendant charged with an offense under this section on community supervision under that article shall, if the defendant committed the offense at a gathering where participants were involved in the abuse of alcohol, including binge drinking or forcing or coercing individuals to consume alcohol, in addition to any other condition imposed by the judge:
  - (1) require the defendant to:
    - (A) perform community service for not less than 20 or more than 40 hours; and
    - (B) attend an alcohol awareness program approved under Section 106.115; and
  - (2) order the Department of Public Safety to suspend the driver's license or permit of the defendant or, if the defendant does not have a driver's license or permit, to deny the issuance of a driver's license or permit to the defendant for 180 days.
- (e) Community service ordered under Subsection (d) is in addition to any community service ordered by the judge under Section 16, Article 42.12, Code of Criminal Procedure, and 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 the court considers appropriate for rehabilitative purposes.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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 a 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 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.

#### **§ 106.12. Expungement of Conviction of a Minor**

- (a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 21 years, may apply to the court in which he was convicted to have the conviction expunged.
- (b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.
- (c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

#### **§ 106.13. Sanctions Against Retailer**

- (a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 90 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the

licensee or permittee with criminal negligence sold, served, dispensed, or delivered an alcoholic beverage to a minor or with criminal negligence permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

- (b) For a second offense the commission or administrator may cancel the license or permit or suspend it for not more than six months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.
- (c) The commission or administrator may relax the provisions of this section concerning suspension and cancellation and assess a sanction the commission or administrator finds just under the circumstances if, at a hearing, the licensee or permittee establishes to the satisfaction of the commission or administrator:
  - (1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;
  - (2) that the permittee or licensee was entrapped; or
  - (3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee.

#### **§ 106.14. Actions of Employee**

- (a) For purposes of this chapter and any other provision of this code relating to the sales, service, dispensing, or delivery of alcoholic beverages to a minor or an intoxicated person or the consumption of alcoholic beverages by a minor or an intoxicated person, the actions of an employee shall not be attributable to the employer if:
  - (1) the employer requires its employees to attend a commission-approved seller training program;
  - (2) the employee has actually attended such a training program; and
  - (3) the employer has not directly or indirectly encouraged the employee to violate such law.
- (b) The commission shall adopt rules or policies establishing the minimum requirements for approved seller training programs. Upon application, the commission shall approve seller training programs meeting such requirements that are sponsored either privately, by public community colleges, or by public or private institutions of higher education that offer a four-year undergraduate program and a degree or certificate in hotel or motel management, restaurant management, or travel or tourism management. The commission may charge an application fee to be set by the commission in such amount as is necessary to defray the expense of processing the application.
- (c) The commission may approve under this section a seller training program sponsored by a licensee or permittee for the purpose of training its employees whether or not such employees are located at the same premises. This subsection shall only apply to licensees or permittees who employ at least 150 persons at any one time during the license or permit year who sell, serve, or prepare alcoholic beverages.
- (d) The commission may approve under this section a seller training program conducted by a hotel management company or a hotel operating company for the employees of five or more hotels operated or managed by the company if:
  - (1) the seller training program is administered through the corporate offices of the company; and
  - (2) the hotels employ a total of at least 200 persons at one time during the license or permit year who sell, serve, or prepare alcoholic beverages.

#### **§ 106.15. Prohibited Activities by Persons Younger Than 18**

- (a) A permittee or licensee commits an offense if he employs, authorizes, permits, or induces a person younger than 18 years of age to dance with another person in exchange for a benefit, as defined by Section 1.07, Penal Code, on the premises covered by the permit or license.
- (b) An offense under Subsection (a) is a Class A misdemeanor.
- (c) In addition to a penalty imposed under Subsection (b), the commission or administrator shall:
  - (1) suspend for a period of five days the license or permit of a person convicted of a first offense under Subsection (a);
  - (2) suspend for a period of 60 days the license or permit of a person convicted of a second offense under Subsection (a); and
  - (3) cancel the license or permit of a person convicted of a third offense under Subsection (a).
- (d) This section does not apply to a gift or benefit given for a dance at a wedding, anniversary, or similar event.
- (e) A person does not commit an offense under Subsection (a) if the person younger than 18 years of age falsely represents the person's age to be at least 18 years of age by displaying an apparently valid Texas driver's license or an identification card issued by the Department of Public Safety containing a physical description consistent with the person's appearance.

### **PENAL CODE**

#### **Chapter 1. General Provisions**

##### **§ 1.07. Definitions**

(a) In this code:

- (4) "Alcoholic beverage" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.
- (8) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (12) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.
- (15) "Criminal negligence" is defined in Section 6.03 (Culpable Mental States).
- (16) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.
- (18) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.

- (23) "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.
- (31) "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.
- (39) "Possession" means actual care, custody, control, or management.
- (40) "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.
- (46) "'Serious bodily injury'" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

**PENAL CODE**  
**Chapter 12. Punishments**

**SUBCHAPTER A. General Provisions**

**§ 12.03. Classification of Misdemeanors**

- (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:
- (1) Class A misdemeanors;
  - (2) Class B misdemeanors;
  - (3) Class C misdemeanors.
- (b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.
- (c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

**§ 12.04. Classification of Felonies**

- (a) Felonies are classified according to the relative seriousness of the offense into five categories:
- (1) capital felonies;
  - (2) felonies of the first degree;
  - (3) felonies of the second degree;
  - (4) felonies of the third degree; and
  - (5) state jail felonies.
- (b) An offense designated a felony in this code without specification as to category is a state jail felony.

**SUBCHAPTER B. Ordinary Misdemeanor Punishments**

**§ 12.21. Class A Misdemeanor**

An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000;
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and confinement.

**§ 12.22. Class B Misdemeanor**

An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000;
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and confinement.

**§ 12.23. Class C Misdemeanor**

An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.

**SUBCHAPTER C. Ordinary Felony Punishments**

**§ 12.31. Capital Felony**

- (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal Justice for life if the individual's case was transferred to the court under Section 54.02, Family Code; or life without parole.
- (b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty, prospective jurors shall be informed that the state is not seeking the death penalty and that (1) a sentence of life imprisonment is mandatory on conviction of the capital felony, if the case was transferred to the court under Section 54.02, Family Code; or (2) a sentence of life imprisonment is mandatory on conviction of the capital felony.

**§ 12.32. First Degree Felony Punishment**

- (a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years.
- (b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.

**§ 12.33. Second Degree Felony Punishment**

- (a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years.
- (b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

**§ 12.34. Third Degree Felony Punishment**

- (a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years.
- (b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.

**§ 12.35. State Jail Felony Punishment**

- (a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.
- (b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.
- (c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:
  - (1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or
  - (2) the individual has previously been finally convicted of any felony:
    - (A) listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or
    - (B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

**PENAL CODE**  
**Chapter 32. Fraud**

**§ 32.34. Fraudulent Transfer of a Motor Vehicle**

- (a) In this section:
  - (2) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.

**Chapter 49. Intoxication And Alcoholic Beverage Offenses**

**§ 49.01. Definitions**

In this chapter:

- (1) "Alcohol concentration" means the number of grams of alcohol per:
  - (A) 210 liters of breath;
  - (B) 100 milliliters of blood; or
  - (C) 67 milliliters of urine.
- (2) "Intoxicated" means:
  - (A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or
  - (B) having an alcohol concentration of 0.08 or more.
- (3) "Motor vehicle" has the meaning assigned by Section 32.34(a).
- (4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.
- (5) "Amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.
- (6) "Mobile amusement ride" has the meaning assigned by Section 2151.002, Occupations Code.

**§ 49.02. Public Intoxication**

- (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.
- (b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

- (c) Except as provided by Subsection (e), an offense under this section is a Class C misdemeanor.
- (d) An offense under this section is not a lesser included offense under Section 49.04.
- (e) An offense under this section committed by a person younger than 21 years of age is punishable in the same manner as if the minor committed an offense to which Section 106.071, Alcoholic Beverage Code, applies.

**§ 49.031. Possession of Alcoholic Beverage in Motor Vehicle**

- (a) In this section:
  - (1) "Open container" means a bottle, can, or other receptacle that contains any amount of alcoholic beverage and that is open, that has been opened, that has a broken seal, or the contents of which are partially removed.
  - (2) "Passenger area of a motor vehicle" means the area of a motor vehicle designed for the seating of the operator and passengers of the vehicle. The term does not include:
    - (A) a glove compartment or similar storage container that is locked;
    - (B) the trunk of a vehicle; or
    - (C) the area behind the last upright seat of the vehicle, if the vehicle does not have a trunk.
  - (3) "Public highway" means the entire width between and immediately adjacent to the boundary lines of any public road, street, highway, interstate, or other publicly maintained way if any part is open for public use for the purpose of motor vehicle travel. The term includes the right-of-way of a public highway.
- (b) A person commits an offense if the person knowingly possesses an open container in a passenger area of a motor vehicle that is located on a public highway, regardless of whether the vehicle is being operated or is stopped or parked. Possession by a person of one or more open containers in a single criminal episode is a single offense.
- (c) It is an exception to the application of Subsection (b) that at the time of the offense the defendant was a passenger in:
  - (1) the passenger area of a motor vehicle designed, maintained, or used primarily for the transportation of persons for compensation, including a bus, taxicab, or limousine; or
  - (2) the living quarters of a motorized house coach or motorized house trailer, including a self-contained camper, a motor home, or a recreational vehicle.
- (d) An offense under this section is a Class C misdemeanor.
- (e) A peace officer charging a person with an offense under this section, instead of taking the person before a magistrate, shall issue to the person a written citation and notice to appear that contains the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged. If the person makes a written promise to appear before the magistrate by signing in duplicate the citation and notice to appear issued by the officer, the officer shall release the person.

**§ 49.045. Driving while intoxicated with child passenger.**

- (a) A person commits an offense if:
  - (1) The person is intoxicated while operating a motor vehicle in a public place; and
  - the vehicle being operated by the person is occupied by a passenger who is younger than 15 years of age.
- (b) An offense under this section is a state jail felony.

**§ 49.04. Driving While Intoxicated**

- (a) A person commits an offense if the person is intoxicated while operating a motor vehicle in a public place.
- (b) Except as provided by Subsections (c) and d and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.
- (c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.
- (d) If it is shown on the trial of an offense under this section that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed, the offense is a Class A misdemeanor.

**§ 49.05. Flying While Intoxicated**

- (a) A person commits an offense if the person is intoxicated while operating an aircraft.
- (b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

**§ 49.06. Boating While Intoxicated**

- (a) A person commits an offense if the person is intoxicated while operating a watercraft.
- (b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

**§ 49.065. Assembling or Operating an Amusement Ride While Intoxicated**

- (a) A person commits an offense if the person is intoxicated while operating an amusement ride or while assembling a mobile amusement ride.
- (b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor with a minimum term of confinement of 72 hours.
- (c) If it is shown on the trial of an offense under this section that at the time of the offense the person operating the amusement ride or assembling the mobile amusement ride had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor with a minimum term of confinement of six days.



**§ 49.07. Intoxication Assault**

- (a) A person commits an offense if the person, by accident or mistake:
  - (1) while operating an aircraft, watercraft, or amusement ride while intoxicated, or while operating a motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another; or
  - (2) as a result of assembling a mobile amusement ride while intoxicated causes serious bodily injury to another.
- (b) In this section, "serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.
- (c) An offense under this section is a felony of the third degree.

**§ 49.08. Intoxication Manslaughter**

- (a) A person commits an offense if the person:
  - (1) operates a motor vehicle in a public place, operates an aircraft, a watercraft, or an amusement ride, or assembles a mobile amusement ride; and
  - (2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.
- (b) An offense under this section is a felony of the second degree.

**§ 49.09. Enhanced Offenses and Penalties**

- (a) Except as provided by Subsection (b), an offense under Section 49.04, 49.05, 49.06, or 49.065 is a Class A misdemeanor, with a minimum term of confinement of 30 days, if it is shown on the trial of the offense that the person has previously been convicted one time of an offense relating to the operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, an offense of operating a watercraft while intoxicated, or an offense of operating or assembling an amusement ride while intoxicated.
- (b) An offense under Section 49.04, 49.05, 49.06, or 49.065 is a felony of the third degree if it is shown on the trial of the offense that the person has previously been convicted:
  - (1) one time of an offense under Section 49.08 or an offense under the laws of another state if the offense contains elements that are substantially similar to the elements of an offense under Section 49.08; or
  - (2) two times of any other offense relating to the operating of a motor vehicle while intoxicated, operating an aircraft while intoxicated, operating a watercraft while intoxicated, or operating or assembling an amusement ride while intoxicated.
  - (b-1) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to a peace officer, a firefighter, or emergency medical services personnel while in the actual discharge of an official duty.
  - (b-2) An offense under Section 49.08 is a felony of the first degree if it is shown on the trial of the offense that the person caused the death of a person described by Subsection (b-1).
  - (b-3) For the purposes of Subsection (b-1):
    - (1) "Emergency medical services personnel" has the meaning assigned by Section 773.003, Health and Safety Code.
    - (2) "Firefighter" means:
      - (A) an individual employed by this state or by a political or legal subdivision of this state who is subject to certification by the Texas Commission on Fire Protection; or
      - (B) a member of an organized volunteer fire-fighting unit that:
        - (i) renders fire-fighting services without remuneration; and
        - (ii) conducts a minimum of two drills each month, each at least two hours long.
  - (b-4) An offense under Section 49.07 is a felony of the second degree if it is shown on the trial of the offense that the person caused serious bodily injury to another in the nature of a traumatic brain injury that results in a persistent vegetative state.
- (c) For the purposes of this section:
  - (1) "Offense relating to the operating of a motor vehicle while intoxicated" means:
    - (A) an offense under Section 49.04;
    - (B) an offense under Section 49.07 or 49.08, if the vehicle operated was a motor vehicle;
    - (C) an offense under Article 67011-1, Revised Statutes, as that law existed before September 1, 1994;
    - (D) an offense under Article 67011-2, Revised Statutes, as that law existed before January 1, 1984;
    - (E) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a motor vehicle; or
    - (F) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.
  - (2) "Offense of operating an aircraft while intoxicated" means:
    - (A) an offense under Section 49.05;
    - (B) an offense under Section 49.07 or 49.08, if the vehicle operated was an aircraft;
    - (C) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994;
    - (D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was an aircraft; or
    - (E) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.
  - (3) "Offense of operating a watercraft while intoxicated" means:
    - (A) an offense under Section 49.06;
    - (B) an offense under Section 49.07 or 49.08, if the vehicle operated was a watercraft;

- (C) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994;
- (D) an offense under Section 19.05(a)(2), as that law existed before September 1, 1994, if the vehicle operated was a watercraft; or
- (E) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.
- (4) "Offense of operating or assembling an amusement ride while intoxicated" means:
  - (A) an offense under Section 49.065;
  - (B) an offense under Section 49.07 or 49.08, if the offense involved the operation or assembly of an amusement ride; or
  - (C) an offense under the law of another state that prohibits the operation of an amusement ride while intoxicated or the assembly of a mobile amusement ride while intoxicated.
- (d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.05, 49.06, 49.065, 49.07, or 49.08 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.
- (e) Except as provided by Subsection (f), a conviction may not be used for purposes of enhancement under this section if:
  - (1) the conviction was a final conviction under Subsection (d);
  - (2) the offense for which the person is being tried was committed more than 10 years after the latest of:
    - (A) the date on which the judgment was entered for the previous conviction;
    - (B) the date on which the person was discharged from any period of community supervision on which the person was placed for the previous conviction;
    - (C) the date on which the person successfully completed any period of parole on which the person was released after serving a portion of the term to which the person was sentenced for the previous conviction; or
    - (D) the date on which the person completed serving any term for which the person was confined or imprisoned for the previous conviction; and
  - (3) the person has not been convicted of an offense under Section 49.04, 49.05, 49.06, 49.065, 49.07, or 49.08 or any offense related to operating a motor vehicle while intoxicated within 10 years of the latest date under Subdivision (2).
- (f) A conviction may be used for the purposes of enhancement under this section regardless of when the conviction occurred if the conviction was for an offense under:
  - (1) Section 49.08 involving the operation of a motor vehicle; or
  - (2) Section 19.05(a)(2), as that law existed before September 1, 1994, involving the operation of a motor vehicle.
- (g) A conviction may be used for purposes of enhancement under this section or enhancement under Subchapter D, Chapter 12, but not under both this section and Subchapter D.
- (h) This subsection applies only to a person convicted of a second or subsequent offense relating to the operating of a motor vehicle while intoxicated committed within five years of the date on which the most recent preceding offense was committed. The court shall enter an order that requires the defendant to have a device installed, on each motor vehicle owned or operated by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator, and that requires that before the first anniversary of the ending date of the period of license suspension under Section 521.344, Transportation Code, the defendant not operate any motor vehicle that is not equipped with that device. The court shall require the defendant to obtain the device at the defendant's own cost on or before that ending date, require the defendant to provide evidence to the court on or before that ending date that the device has been installed on each appropriate vehicle, and order the device to remain installed on each vehicle until the first anniversary of that ending date. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to extend beyond the first anniversary of the date of installation. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Failure to comply with an order entered under this subsection is punishable by contempt. For the purpose of enforcing this subsection, the court that enters an order under this subsection retains jurisdiction over the defendant until the date on which the device is no longer required to remain installed. To the extent of a conflict between this subsection and Section 13(i), Article 42.12, Code of Criminal Procedure, this subsection controls.

#### **§ 49.10. No Defense**

In a prosecution under Section 49.03, 49.04, 49.05, 49.06, 49.065, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

#### **§ 49.11. Proof of Mental State Unnecessary**

- (a) Notwithstanding Section 6.02(b), proof of a culpable mental state is not required for conviction of an offense under this chapter.
- (b) Subsection (a) does not apply to an offense under Section 49.031.

#### **§ 49.12. Applicability to certain conduct.**

Sections 49.07 and 49.08 do not apply to injury to or the death of an unborn child if the conduct charged is conduct committed by the mother of the unborn child.

## **CODE OF CRIMINAL PROCEDURE**

### **CHAPTER 18. SEARCH WARRANTS**

Art. 18.01. [304] SEARCH WARRANT. (a) A "search warrant" is a written order, issued by a magistrate and directed to a peace officer, commanding him to search for any property or thing and to seize the same and bring it before such magistrate or commanding him to search for and photograph a child and to deliver to the magistrate any of the film exposed pursuant to the order.

(b) No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested. The affidavit is public information if executed, and the magistrate's clerk shall make a copy of the affidavit available for public inspection in the clerk's office during normal business hours.

(c) A search warrant may not be issued under Article 18.02(10) unless the sworn affidavit required by Subsection (b) sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d), (i), and (j), only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, or a justice of the Supreme Court of Texas, including the chief justice, may issue warrants under Article 18.02(10)

(d) Only the specifically described property or items set forth in a search warrant issued under Subdivision (10) of Article 18.02 of this code or property, items or contraband enumerated in Subdivisions (1) through (9) or in Subdivision (12) of Article 18.02 of this code may be seized. A subsequent search warrant may be issued pursuant to Subdivision (10) of Article 18.02 of this code to search the same person, place, or thing subjected to a prior search under Subdivision (10) of Article 18.02 of this code only if the subsequent search warrant is issued by a judge of a district court, a court of appeals, the court of criminal appeals, or the supreme court.

(e) A search warrant may not be issued under Subdivision (10) of Article 18.02 of this code to search for and seize property or items that are not described in Subdivisions (1) through (9) of that article and that are located in an office of a newspaper, news magazine, television station, or radio station, and in no event may property or items not described in Subdivisions (1) through (9) of that article be legally seized in any search pursuant to a search warrant of an office of a newspaper, news magazine, television station, or radio station.

(f) A search warrant may not be issued pursuant to Article 18.021 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause:

- (1) that a specific offense has been committed;
- (2) that a specifically described person has been a victim of the offense;
- (3) that evidence of the offense or evidence that a particular person committed the offense can be detected by photographic means; and

- (4) that the person to be searched for and photographed is located at the particular place to be searched.

(g) A search warrant may not be issued under Subdivision (12), Article 18.02, of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause that a specific felony offense has been committed and that the specifically described property or items that are to be searched for or seized constitute contraband as defined in Article 59.01 of this code and are located at or on the particular person, place, or thing to be searched.

(h) Except as provided by Subsection (i) of this article, a warrant under Subdivision (12), Article 18.02 of this code may only be issued by:

- (1) a judge of a municipal court of record who is an attorney licensed by the state;
- (2) a judge of a county court who is an attorney licensed by the state; or
- (3) a judge of a statutory county court, district court, the court of criminal appeals, or the supreme court.

(i) In a county in which the only judge serving the county who is a licensed attorney is a district judge whose district includes more than one county or in which the only judges serving the county who are licensed attorneys are two or more district judges each of whose district includes more than one county, any magistrate may issue a search warrant under Subdivision (10) or Subdivision (12) of Article 18.02 of this code. This section is not applicable to a subsequent search warrant under Subdivision (10) of Article 18.02 of this code.

(j) Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(10) to collect a blood specimen from a person who:

- (1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and
- (2) refuses to submit to a breath or blood alcohol test.

## **Chapter 42. Judgment and Sentence**

### **Article 42.12. [781d] Community supervision**

#### **Deferred Adjudication; Community Supervision Section 5.**

(d) In all other cases the judge may grant deferred adjudication unless:

- (1) the defendant is charged with an offense:
  - (A) under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or
  - (B) for which punishment may be increased under Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it is shown that the defendant has been previously convicted of an offense for which punishment was increased under any one of those subsections; or
- (2) the defendant:
  - (A) is charged with an offense under Section 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the victim, or a felony described by Section 13B(b) of this article; and
  - (B) has previously been placed on community supervision for any offense under Paragraph (A) of this subdivision.

## DWI Community Supervision

### Section 13.

- (a) A judge granting community supervision to a defendant convicted of an offense under Chapter 49, Penal Code, shall require as a condition of community supervision that the defendant submit to:
- (1) not less than three days of confinement in county jail if the defendant was punished under Section 49.09(a); not less than five days of confinement in county jail if the defendant was punished under Section 49.09(a) and was subject to Section 49.09(g); not less than 10 days of confinement in county jail if the defendant was punished under Section 49.09(b) or (c); or not less than 30 days of confinement in county jail if the defendant was convicted under Section 49.07; and
  - (2) an evaluation by a supervision officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.
- (b) A judge granting community supervision to a defendant convicted of an offense under Section 49.08, Penal Code, shall require as a condition of community supervision that the defendant submit to a period of confinement of not less than 120 days.
- (c) If the director of a facility to which a defendant is referred under Subdivision (2) of Subsection (a) of this section determines that the defendant is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the judge that referred the defendant of that fact.
- (d) If a judge requires as a condition of community supervision that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the judge shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The judge may, in its discretion, credit such cost paid by the defendant against the fine assessed. In making a determination of a defendant's ability to pay the cost of rehabilitation under this subsection, the judge shall consider whether the defendant has insurance coverage that will pay for rehabilitation.
- (e) The confinement imposed shall be treated as a condition of community supervision, and in the event of a sentence of confinement upon the revocation of community supervision, the term of confinement served may not be credited toward service of such subsequent confinement.
- (f) If a judge grants community supervision to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code, and if before receiving community supervision the defendant has not submitted to an evaluation under Section 9 of this article, the judge shall require the defendant to submit to the evaluation as a condition of community supervision. If the evaluation indicates to the judge that the defendant is in need of treatment for drug or alcohol dependency, the judge shall require the defendant to submit to that treatment as a condition of community supervision in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse or in a program or facility that complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice, after consultation by the division with the commission.
- (g) A jury that recommends community supervision for a person convicted of an offense under Sections 49.04-49.08, Penal Code, may recommend that any driver's license issued to the defendant under Chapter 521, Transportation Code, not be suspended. This subsection does not apply to a person punished under Section 49.09(a) or (b), Penal Code, and subject to Section 49.09(g) of that code.
- (h) If a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the judge shall require, as a condition of the community supervision, that the defendant attend and successfully complete before the 181st day after the day community supervision is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the Texas Department of Transportation, and the community justice assistance division of the Texas Department of Criminal Justice designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement or may grant an extension of time to successfully complete the program that expires not later than one year after the beginning date of the person's community supervision, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and the fact that the defendant resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause for waiver in the judgment. If a defendant is required, as a condition of community supervision, to attend an educational program or if the court waives the educational program requirement, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. If the court grants an extension of time in which the person may complete the program, the court clerk shall immediately report that fact to the Department of Public Safety on a form prescribed by the department. The report must include the beginning date of the person's community supervision. Upon the person's successful completion of the educational program, the person's instructor shall give notice to the Department of Public Safety for inclusion in the person's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code. The Department of Public Safety may not reinstate a license suspended under this subsection unless the person whose license was suspended makes application to the department for reinstatement of the person's license and pays to the department a reinstatement fee of \$100. The Department of Public Safety shall remit all fees collected under this subsection to the comptroller for deposit in the general revenue fund. This subsection does



not apply to a defendant if a jury recommends community supervision for the defendant and also recommends that the defendant's driver's license not be suspended.

- (i) If a person convicted of an offense under Sections 49.04-49.08, Penal Code, is placed on community supervision, the court may require as a condition of community supervision that the defendant have a device installed, on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant, that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator and that the defendant not operate any motor vehicle that is not equipped with that device. If the person is convicted of an offense under Sections 49.04-49.06, Penal Code, and punished under Section 49.09(a) or (b), Penal Code, or of a second or subsequent offense under Section 49.07 or 49.08, Penal Code, and the person after conviction of either offense is placed on community supervision, the court shall require as a condition of community supervision that the defendant have the device installed on the appropriate vehicle and that the defendant not operate any motor vehicle unless the vehicle is equipped with that device. Before placing on community supervision a person convicted of an offense under Sections 49.04-49.08, Penal Code, the court shall determine from criminal history record information maintained by the Department of Public Safety whether the person has one or more previous convictions under Sections 49.04-49.08, Penal Code, or has one previous conviction under Sections 49.04-49.07, Penal Code, or one previous conviction under Section 49.08, Penal Code. If the court determines that the person has one or more such previous convictions, the court shall require as a condition of community supervision that the defendant have that device installed on the motor vehicle owned by the defendant or on the vehicle most regularly driven by the defendant and that the defendant not operate any motor vehicle unless the vehicle is equipped with the device described in this subsection. The court shall require the defendant to obtain the device at the defendant's own cost before the 30th day after the date of conviction unless the court finds that to do so would not be in the best interest of justice and enters its findings on record. The court shall require the defendant to provide evidence to the court within the 30-day period that the device has been installed on the appropriate vehicle and order the device to remain installed on that vehicle for a period not less than 50 percent of the supervision period. If the court determines the offender is unable to pay for the device, the court may impose a reasonable payment schedule not to exceed twice the period of the court's order. The Department of Public Safety shall approve devices for use under this subsection. Section 521.247, Transportation Code, applies to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a person is required to operate a motor vehicle in the course and scope of the person's employment and if the vehicle is owned by the employer, the person may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply, however, if the business entity that owns the vehicle is owned or controlled by the person whose driving privilege has been restricted. A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this subsection if:
  - (1) the previous conviction was a final conviction under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted and placed on community supervision; and
  - (2) the person has not been convicted of an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08 of that code, committed within 10 years before the date on which the instant offense for which the person was convicted and placed on community supervision.
- (j) The judge shall require a defendant who is punished under Section 49.09, Penal Code, as a condition of community supervision, to attend and successfully complete an educational program for repeat offenders approved by the Texas Commission on Alcohol and Drug Abuse. The Texas Commission on Alcohol and Drug Abuse shall adopt rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for initial certification of approval or for renewal of the certification. The judge may waive the educational program requirement only if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and whether the defendant resides out of state or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a defendant is required, as a condition of community supervision, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. The report must include the beginning date of the defendant's community supervision. On the defendant's successful completion of the educational program for repeat offenders, the defendant's instructor shall give notice to the Department of Public Safety for inclusion in the defendant's driving record and to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk for filing. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program for repeat offenders within the period required by the judge, as shown on department records, the department shall revoke the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or permit, as provided by Sections 521.344(e) and (f), Transportation Code.
- (k) Notwithstanding Sections 521.344(d)-(i), Transportation Code, if the judge, under Subsection (h) or (j) of this section, permits or requires a defendant punished under Section 49.09, Penal Code, to attend an educational program as a condition of community supervision, or waives the required attendance for such a program, and the defendant has previously been required to attend such a program, or the required attendance at the program had been waived, the judge nonetheless shall order the suspension of the driver's license, permit, or operating privilege of that person for a period determined by the judge according to the following schedule:
  - (1) not less than 90 days or more than 365 days, if the defendant is convicted under Sections 49.04-49.08, Penal Code;
  - (2) not less than 180 days or more than two years, if the defendant is punished under Section 49.09(a) or (b), Penal Code; or



- (3) not less than one year or more than two years, if the person is convicted of a second or subsequent offense under Sections 49.04-49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed.
- (l) If the Department of Public Safety receives notice that a defendant has been required or permitted to attend a subsequent educational program under Subsection (h), (j), or (k) of this section, although the previously required attendance had been waived, but the judge has not ordered a period of suspension, the department shall suspend the defendant's driver's license, permit, or operating privilege, or shall issue an order prohibiting the defendant from obtaining a license or permit for a period of 365 days.
- (m) If a judge revokes the community supervision of a defendant for an offense under Section 49.04, Penal Code, or an offense involving the operation of a motor vehicle under Section 49.07, Penal Code, and the driver's license or privilege to operate a motor vehicle has not previously been ordered by the judge to be suspended, or if the suspension was previously probated, the judge shall suspend the license or privilege for a period provided under Subchapter O, Chapter 521, Transportation Code. The suspension shall be reported to the Department of Public Safety as provided under Section 521.347, Transportation Code.
- (n) Notwithstanding any other provision of this section or other law, the judge who places on community supervision a defendant who was younger than 21 years of age at the time of the offense and was convicted for an offense under Sections 49.04-49.08, Penal Code, shall:
  - (1) order that the defendant's driver's license be suspended for 90 days beginning on the date that the person is placed on community supervision; and
  - (2) require as a condition of community supervision that the defendant not operate a motor vehicle unless the vehicle is equipped with the device described by Subsection (i) of this section.

## CODE OF CRIMINAL PROCEDURE

### Article 45.051. Suspension of Sentence and Deferral of Final Disposition

#### 45.051. Suspension of Sentence and Deferral of Final Disposition

- (a) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. An order of deferral under this subsection terminates any liability under a bail bond or an appearance bond given for the charge.
- (b) During the deferral period, the justice may require the defendant to:
  - (1) post a bond in the amount of the fine assessed to secure payment of the fine;
  - (2) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;
  - (3) submit to professional counseling;
  - (4) submit to diagnostic testing for alcohol or a controlled substance or drug;
  - (5) submit to a psychosocial assessment;
  - (6) participate in an alcohol or drug abuse treatment or education program;
  - (7) pay the costs of any diagnostic testing, psychosocial assessment, or participation in a treatment or education program either directly or through the court as court costs; and
  - (8) complete a driving safety course approved under the Texas Driver and Traffic Safety Education Act (Article 4413(29c), Vernon's Texas Civil Statutes) or another course as directed by the judge;
  - (9) present to the court satisfactory evidence that the defendant has complied with each requirement imposed by the judge under this article; and
  - (10) comply with any other reasonable condition.
- (c) At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.
- (d) If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.
- (e) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.
- (f) This article does not apply to:
  - (1) an offense to which Section 542.404 or 729.004(b), Transportation Code, applies; or
  - (2) a traffic offense committed by a person who holds a commercial driver's license.

## CODE OF CRIMINAL PROCEDURE

### Article 102.018. Costs Attendant to Intoxication Convictions

#### 102.018. Costs Attendant to Intoxication Convictions

- (a) Except as provided by Subsection (d) of this article, on conviction of an offense relating to the driving or operating of a motor vehicle under Section 49.04, Penal Code, the court shall impose a cost of \$15 on a defendant if, subsequent to the arrest of the defendant, a law enforcement agency visually recorded the defendant with an electronic device. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case. The court shall collect the costs in the same manner as other costs are collected in the case.
- (b) Except as provided by Subsection (d) of this article, on conviction of an offense relating to the driving or operating of a motor vehicle punishable under Section 49.04(b), Penal Code, the court shall impose as a cost of court on the defendant an amount that is equal to the cost of an evaluation of the defendant performed under Section 13(a), Article 42.12, of this code. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case, except that if the court determines that the defendant is indigent and unable to pay the cost, the court may waive the imposition of the cost.
- (c)
  - (1) Except as provided by Subsection (d) of this article, if a person commits an offense under Chapter 49, Penal Code, and as a direct result of the offense the person causes an incident resulting in an accident response by a public agency, the person is liable on conviction for the offense for the reasonable expense to the agency of the accident response. In this article, a person is considered to have been convicted in a case if:
    - (A) sentence is imposed;
    - (B) the defendant receives probation or deferred adjudication; or
    - (C) the court defers final disposition of the case.
  - (2) The liability authorized by this subsection may be established by civil suit; however, if a determination is made during a criminal trial that a person committed an offense under Chapter 49, Penal Code, and as a direct result of the offense the person caused an incident resulting in an accident response by a public agency, the court may include the obligation for the liability as part of the judgment. A judgment that includes such an obligation is enforceable as any other judgment.
  - (3) The liability is a debt of the person to the public agency, and the public agency may collect the debt in the same manner as the public agency collects an express or implied contractual obligation to the agency.
  - (4) A person's liability under this subsection for the reasonable expense of an accident response may not exceed \$1,000 for a particular incident. For the purposes of this subdivision, a reasonable expense for an accident response includes only those costs to the public agency arising directly from an accident response to a particular incident, such as the cost of providing police, fire-fighting, rescue, ambulance, and emergency medical services at the scene of the incident and the salaries of the personnel of the public agency responding to the incident.
  - (5) A bill for the expense of an accident response sent to a person by a public agency under this subsection must contain an itemized accounting of the components of the total charge. A bill that complies with this subdivision is prima facie evidence of the reasonableness of the costs incurred in the accident response to which the bill applies.
  - (6) A policy of motor vehicle insurance delivered, issued for delivery, or renewed in this state may not cover payment of expenses charged to a person under this subsection.
  - (7) In this subsection, "public agency" means the state, a county, a municipality district, or a public authority located in whole or in part in this state that provides police, fire-fighting, rescue, ambulance, or emergency medical services.
- (d) Subsections (a), (b), and (c) of this article do not apply to an offense under Section 49.02 or 49.03, Penal Code.

## TRANSPORTATION CODE

### Chapter 521. Driver's Licenses and Certificates

#### SUBCHAPTER L. OCCUPATIONAL LICENSE

##### § 521.241. Definitions

In this subchapter:

- (1) "Essential need" means a need of a person for the operation of a motor vehicle:
  - (A) in the performance of an occupation or trade or for transportation to and from the place at which the person practices the person's occupation or trade;
  - (B) for transportation to and from an educational facility in which the person is enrolled; or
  - (C) in the performance of essential household duties.
- (2) "Ignition interlock device" means a device that uses a deep-lung breath analysis mechanism to make impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator of the vehicle.

##### § 521.242. Petition

- (a) A person whose license has been suspended for a cause other than a physical or mental disability or impairment or a conviction under Section 49.04, Penal Code, may apply for an occupational license by filing a verified petition with the clerk of the county court or district court with jurisdiction in the county in which:
  - (1) the person resides; or

- (2) the offense occurred for which the license was suspended.
- (b) A person may apply for an occupational license by filing a verified petition only with the clerk of the county court or district court in which the person was convicted if:
  - (1) the person's license has been automatically suspended or canceled under this chapter for a conviction of an offense under the laws of this state; and
  - (2) the person has not been issued, in the 10 years preceding the date of the filing of the petition, more than one occupational license after a conviction under the laws of this state.
- (c) A petition filed under this section must set forth in detail the person's essential need.
- (d) A petition filed under Subsection (b) must state that the petitioner was convicted in that court for an offense under the laws of this state.
- (e) The clerk of the court shall file the petition as in any other civil matter.
- (f) A court may not grant an occupational license for the operation of a commercial motor vehicle to which Chapter 522 applies.

**§ 521.243. Notice to State; Presentation of Evidence**

- (a) The clerk of the court shall send by certified mail to the attorney representing the state a copy of the petition and notice of the hearing if the petitioner's license was suspended following a conviction for:
  - (1) an offense under Section 19.05, 49.04, 49.07, or 49.08, Penal Code; or
  - (2) an offense to which Section 521.342 applies.
- (b) A person who receives a copy of a petition under Subsection (a) may attend the hearing and may present evidence at the hearing against granting the petition.

**§ 521.244. Hearing; Order; Determination of Essential Need**

- (a) The judge who hears the petition shall sign an order finding whether an essential need exists.
- (b) In determining whether an essential need exists, the judge shall consider:
  - (1) the petitioner's driving record; and
  - (2) any evidence presented by a person under Section 521.243(b).
- (c) If the judge finds that there is an essential need, the judge also, as part of the order, shall:
  - (1) determine the actual need of the petitioner to operate a motor vehicle; and
  - (2) require the petitioner to provide evidence of financial responsibility in accordance with Chapter 601.
- (d) Except as provided by Section 521.243(b), the hearing on the petition may be ex parte.

**§ 521.245. Required Counseling**

- (a) If the petitioner's license has been suspended under Chapter 524 or 724, the court shall require the petitioner to attend a program approved by the court that is designed to provide counseling and rehabilitation services to persons for alcohol dependence. This requirement shall be stated in the order granting the occupational license.
- (b) The program required under Subsection (a) may not be the program provided by Section 521.344 or by Section 13, Article 42.12, Code of Criminal Procedure.
- (c) The court may require the person to report periodically to the court to verify that the person is attending the required program.
- (d) On finding that the person is not attending the program as required, the court may revoke the order granting the occupational license. The court shall send a certified copy of the order revoking the license to the department.
- (e) On receipt of the copy under Subsection (d), the department shall suspend the person's occupational license for:
  - (1) 60 days, if the original driver's license suspension was under Chapter 524; or
  - (2) 120 days, if the original driver's license suspension was under Chapter 724.
- (f) A suspension under Subsection (e):
  - (1) takes effect on the date on which the court signs the order revoking the occupational license; and
  - (2) is cumulative of the original suspension.
- (g) A person is not eligible for an occupational license during a period of suspension under Subsection (e).

**§ 521.246. Ignition Interlock Device Requirement**

- (a) If the person's license has been suspended after a conviction under Section 49.04, 49.07, or 49.08, Penal Code, the judge, before signing an order, shall determine from the criminal history record information maintained by the department whether the person has any previous conviction under those laws.
- (b) As part of the order the judge may restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that the person's license has been suspended following a conviction under Section 49.04, 49.07, or 49.08, Penal Code. As part of the order, the judge shall restrict the person to the operation of a motor vehicle equipped with an ignition interlock device if the judge determines that:
  - (1) the person has two or more convictions under any combination of Section 49.04, 49.07, or 49.08, Penal Code; or
  - (2) the person's license has been suspended after a conviction under Section 49.04, Penal Code, for which the person has been punished under Section 49.09, Penal Code.

- (c) The person shall obtain the ignition interlock device at the person's own expense unless the court finds that to do so is not in the best interest of justice and enters that finding in the record. If the court determines that the person is unable to pay for the device, the court may impose a reasonable payment schedule for a term not to exceed twice the period of the court's order.
- (d) The court shall order the ignition interlock device to remain installed for at least half of the period of supervision.
- (e) A person to whom this section applies may operate a motor vehicle without the installation of an approved ignition interlock device if:
  - (1) the person is required to operate a motor vehicle in the course and scope of the person's employment;
  - (2) the vehicle is owned by the person's employer;
  - (3) the employer is not owned or controlled by the person whose driving privilege is restricted;
  - (4) the employer is notified of the driving privilege restriction; and
  - (5) proof of that notification is with the vehicle.
- (f) A previous conviction may not be used for purposes of restricting a person to the operation of a motor vehicle equipped with an interlock ignition device under this section if:
  - (1) the previous conviction was a final conviction under Section 49.04, 49.07, or 49.08, Penal Code, and was for an offense committed more than 10 years before the instant offense for which the person was convicted; and
  - (2) the person has not been convicted of an offense under Section 49.04, 49.07, or 49.08 of that code committed within 10 years before the date on which the instant offense for which the person was convicted.

**§ 521.2465. Restricted License**

- (a) On receipt of notice that a person has been restricted to the use of a motor vehicle equipped with an ignition interlock device, the department shall notify that person that the person's driver's license expires on the 30th day after the date of the notice. On application by the person and payment of a fee of \$10, the department shall issue a special restricted license that authorizes the person to operate only a motor vehicle equipped with an ignition interlock device.
- (b) On receipt of a copy of a court order removing the restriction, the department shall issue the person a driver's license without the restriction.

**§ 521.247. Approval of Ignition Interlock Devices by Department**

- (a) The department shall adopt rules for the approval of ignition interlock devices used under this subchapter.
- (b) The department by rule shall establish general standards for the calibration and maintenance of the devices. The manufacturer or an authorized representative of the manufacturer is responsible for calibrating and maintaining the device.
- (c) If the department approves a device, the department shall notify the manufacturer of that approval in writing. Written notice from the department to a manufacturer is admissible in a civil or criminal proceeding in this state. The manufacturer shall reimburse the department for any cost incurred by the department in approving the device.
- (d) The department is not liable in a civil or criminal proceeding that arises from the use of an approved device.

**§ 521.2475. Ignition Interlock Device Evaluation**

- (a) On January 1 of each year, the department shall issue an evaluation of each ignition interlock device approved under Section 521.247 using guidelines established by the National Highway Traffic Safety Administration, including:
  - (1) whether the device provides accurate detection of alveolar air;
  - (2) the moving retest abilities of the device;
  - (3) the use of tamper-proof blood alcohol content level software by the device;
  - (4) the anticircumvention design of the device;
  - (5) the recalibration requirements of the device; and
  - (6) the breath action required by the operator.
- (b) The department shall assess the cost of preparing the evaluation equally against each manufacturer of an approved device.

**§ 521.2476. Minimum Standards for Vendors of Ignition Interlock Devices**

- (a) The department by rule shall establish:
  - (1) minimum standards for vendors of ignition interlock devices who conduct business in this state; and
  - (2) procedures to ensure compliance with those standards, including procedures for the inspection of a vendor's facilities.
- (b) The minimum standards shall require each vendor to:
  - (1) be authorized by the department to do business in this state;
  - (2) install a device only if the device is approved under Section 521.247;
  - (3) obtain liability insurance providing coverage for damages arising out of the operation or use of devices in amounts and under the terms specified by the department;
  - (4) install the device and activate any anticircumvention feature of the device within a reasonable time after the vendor receives notice that installation is ordered by a court;
  - (5) install and inspect the device in accordance with any applicable court order;
  - (6) repair or replace a device not later than 48 hours after receiving notice of a complaint regarding the operation of the device;
  - (7) submit a written report of any violation of a court order to that court and to the person's supervising officer, if any, not later than 48 hours after the vendor discovers the violation;

- (8) maintain a record of each action taken by the vendor with respect to each device installed by the vendor, including each action taken as a result of an attempt to circumvent the device, until at least the fifth anniversary after the date of installation;
- (9) make a copy of the record available for inspection by or send a copy of the record to any court, supervising officer, or the department on request; and
- (10) annually provide to the department a written report of each service and ignition interlock device feature made available by the vendor.
- (c) The department may revoke the department's authorization for a vendor to do business in this state if the vendor or an officer or employee of the vendor violates:
  - (1) any law of this state that applies to the vendor; or
  - (2) any rule adopted by the department under this section or another law that applies to the vendor.
- (d) A vendor shall reimburse the department for the reasonable cost of conducting each inspection of the vendor's facilities under this section.
- (e) In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.

#### **§ 521.248. Order Requirements**

- (a) An order granting an occupational license must specify:
  - (1) the hours of the day and days of the week during which the person may operate a motor vehicle;
  - (2) the reasons for which the person may operate a motor vehicle; and
  - (3) areas or routes of travel permitted.
- (b) The person may not operate a motor vehicle for more than four hours in any 24-hour period, except that on a showing of necessity the court may allow the person to drive for any period determined by the court that does not exceed 12 hours in any 24-hour period.
- (c) An order granting an occupational license remains valid until the end of the period of suspension of the person's regular driver's license.

#### **§ 521.249. Notice to Department; Issuance of Occupational License**

- (a) The court shall send a certified copy of the petition and the court order setting out the judge's findings and restrictions to the department. The person may use a copy of the order as a restricted license until the 31st day after the date on which the order takes effect.
- (b) On receipt of the copy under this section and after compliance with Chapter 601, the department shall issue an occupational license to the person. The license must refer on its face to the court order.

#### **§ 521.250. Court Order in Operator's Possession**

A person who is issued an occupational license shall have in the person's possession a certified copy of the court order granting the license while operating a motor vehicle. The person shall allow a peace officer to examine the order on request.

#### **§ 521.251. Effective Date of Occupational License**

- (a) If a person's license is suspended under Chapter 524 or 724 and the person has not had a prior suspension arising from an alcohol-related or drug-related enforcement contact in the five years preceding the date of the person's arrest, an order under this subchapter granting the person an occupational license takes effect immediately. However, the court shall order the person to comply with the counseling and rehabilitation program required under Section 521.245.
- (b) If the person's driver's license has been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest, the order may not take effect before the 91st day after the effective date of the suspension.
- (c) If the person's driver's license has been suspended as a result of a conviction under Section 49.04, 49.07, or 49.08, Penal Code, during the five years preceding the date of the person's arrest, the order may not take effect before the 181st day after the effective date of the suspension.
- (d) Notwithstanding any other provision in this section, if the person's driver's license has been suspended as a result of a second or subsequent conviction under Section 49.04, 49.07, or 49.08, Penal Code, committed within five years of the date on which the most recent preceding offense was committed, an order granting the person an occupational license may not take effect before the first anniversary of the effective date of the suspension.
- (e) For the purposes of this section, "alcohol-related or drug-related enforcement contact" has the meaning assigned by Section 524.001.

#### **§ 521.252. License Revocation**

- (a) The court that signs an order granting an occupational license may issue at any time an order revoking the license for good cause.
- (b) The court shall send a certified copy of the order to the department.

#### **§ 521.253. Criminal Penalty**



- (a) A person who holds an occupational license commits an offense if the person:
  - (1) operates a motor vehicle in violation of a restriction imposed on the license; or
  - (2) fails to have in the person's possession a certified copy of the court order as required under Section 521.250.
- (b) An offense under this section is a Class B misdemeanor.
- (c) On conviction of an offense under this section, the occupational license and the order granting that license are revoked.

## **SUBCHAPTER O. AUTOMATIC SUSPENSION**

### **§ 521.341. Requirements for Automatic License Suspension**

Except as provided by Sections 521.344(d)-(i), a license is automatically suspended on final conviction of the license holder of:

- (1) an offense under Section 19.05, Penal Code, committed as a result of the holder's criminally negligent operation of a motor vehicle;
- (2) an offense under Section 38.04, Penal Code;
- (3) an offense under Section 49.04, 40.045, or 49.08, Penal Code;
- (4) an offense under Section 49.07, Penal Code, if the person used a motor vehicle in the commission of the offense;
- (5) an offense punishable as a felony under the motor vehicle laws of this state;
- (6) an offense under Section 550.021; or
- (7) an offense under Section 521.451 or 521.453.

### **§ 521.342. Person Under 21 Years of Age**

- (a) Except as provided by Section 521.344, the license of a person who was under 21 years of age at the time of the offense, other than an offense classified as a misdemeanor punishable by fine only, is automatically suspended on conviction of:
  - (1) an offense under Section 49.04, 49.05, or 49.07, Penal Code, committed as a result of the introduction of alcohol into the body;
  - (2) an offense under the Alcoholic Beverage Code, other than an offense to which Section 106.071 of that code applies, involving the manufacture, delivery, possession, transportation, or use of an alcoholic beverage;
  - (3) a misdemeanor offense under Chapter 481, Health and Safety Code, for which Subchapter P does not require the automatic suspension of the license;
  - (4) an offense under Chapter 483, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a dangerous drug; or
  - (5) an offense under Chapter 484, Health and Safety Code, involving the manufacture, delivery, possession, transportation, or use of a volatile chemical.
- (b) The department shall suspend for one year the license of a person who is under 21 years of age and is convicted of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code, regardless of whether the person is required to attend an educational program under Section 13(h), Article 42.12, Code of Criminal Procedure, that is designed to rehabilitate persons who have operated motor vehicles while intoxicated, unless the person is placed under community supervision under that article and is required as a condition of the community supervision to not operate a motor vehicle unless the vehicle is equipped with the device described by Section 13(i) of that article. If the person is required to attend such a program and does not complete the program before the end of the person's suspension, the department shall suspend the person's license or continue the suspension, as appropriate, until the department receives proof that the person has successfully completed the program. On the person's successful completion of the program, the person's instructor shall give notice to the department and to the community supervision and corrections department in the manner provided by Section 13(h), Article 42.12, Code of Criminal Procedure.
- (c) A person whose license is suspended under Subsection (a) remains eligible to receive an occupational license under Subchapter L. Suspension under Subsection (a) is not a suspension for physical or mental disability or impairment for purposes of eligibility to apply for an occupational license under Subchapter L.

### **§ 521.343. Period of Suspension; Extension**

- (a) Except as provided by Sections 521.342(b), 521.344(a), (b), (d), (e), (f), (g), (h), and (i), 521.345, 521.346, and 521.3465, a suspension under this subchapter is for one year.
- (b) If a license is suspended under this subchapter for a subsequent period, the subsequent suspension is for 18 months except as otherwise provided by a section listed in Subsection (a).
- (c) If the license holder is convicted of operating a motor vehicle while the license to operate a motor vehicle is cancelled, disqualified, suspended, revoked, or denied, the period is extended for the same term as the original suspension or disqualification, in addition to any penalty assessed under this chapter or Chapter 522.

### **§ 521.344. Suspension for Offenses Involving Intoxication**

- (a) Except as provided by Sections 521.342(b) and 521.345, and by Subsections (d)-(i), if a person is convicted of an offense under Section 49.04, 49.045, or 49.07, Penal Code, the license suspension:
  - (1) begins on a date set by the court that is not earlier than the date of the conviction or later than the 30th day after the date of the conviction, as determined by the court; and

- (2) continues for a period set by the court according to the following schedule:
  - (A) not less than 90 days or more than one year, if the person is punished under Section 49.04, 49.045, or 49.07, Penal Code, except that if the person's license is suspended for a second or subsequent offense under Section 49.07 committed within five years of the date on which the most recent preceding offense was committed, the suspension continues for a period of one year;
  - (B) not less than 180 days or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code; or
  - (C) not less than one year or more than two years, if the person is punished under Section 49.09(a) or (b), Penal Code, and is subject to Section 49.09(g) of that code.
- (b) Except as provided by Section 521.342(b), if a person is convicted of an offense under Section 49.08, Penal Code, the license suspension:
  - (1) begins on a date set by the court that is not earlier than the date of the conviction or later than the 30th day after the date of the conviction, as determined by the court; and
  - (2) continues for a period set by the court of not less than 180 days or more than two years, except that if the person's license is suspended for a second or subsequent offense under Section 49.08, Penal Code, committed within 10 years of the date on which the most recent preceding offense was committed, the suspension continues for a period set by the court of not less than one year or more than two years.
- (c) The court shall credit toward the period of suspension a suspension imposed on the person for refusal to give a specimen under Chapter 724 if the refusal followed an arrest for the same offense for which the court is suspending the person's license under this chapter. The court may not extend the credit to a person:
  - (1) who has been previously convicted of an offense under Section 49.04, 49.045, 49.07, or 49.08, Penal Code; or
  - (2) whose period of suspension is governed by Section 521.342(b).
- (d) Except as provided by Subsection (e) and Section 521.342(b), during a period of probation the department may not revoke the person's license if the person is required under Section 13(h) or (j), Article 42.12, Code of Criminal Procedure, to successfully complete an educational program designed to rehabilitate persons who have operated motor vehicles while intoxicated, unless the person was punished under Section 49.09(a) or (b), Penal Code, and was subject to Section 49.09(g) of that code. The department may not revoke the license of a person:
  - (1) for whom the jury has recommended that the license not be revoked under Section 13(g), Article 42.12, Code of Criminal Procedure; or
  - (2) who is placed under community supervision under that article and is required as a condition of community supervision to not operate a motor vehicle unless the vehicle is equipped with the device described by Section 13(i) of that article, unless the person was punished under Section 49.09(a) or (b), Penal Code, and was subject to Section 49.09(g) of that code.
- (e) After the date has passed, according to department records, for successful completion of the educational program designed to rehabilitate persons who operated motor vehicles while intoxicated, the director shall revoke the license of a person who does not successfully complete the program or, if the person is a resident without a license to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license.
- (f) After the date has passed, according to department records, for successful completion of an educational program for repeat offenders as required by Section 13, Article 42.12, Code of Criminal Procedure, the director shall suspend the license of a person who does not successfully complete the program or, if the person is a resident without a license, shall issue an order prohibiting the person from obtaining a license.
- (g) A revocation, suspension, or prohibition order under Subsection (e) or (f) remains in effect until the department receives notice of successful completion of the educational program. The director shall promptly send notice of a revocation or prohibition order issued under Subsection (e) or (f) by first class mail to the person at the person's most recent address as shown in the records of the department. The notice must include the date of the revocation or prohibition order, the reason for the revocation or prohibition, and a statement that the person has the right to request in writing that a hearing be held on the revocation or prohibition. Notice is considered received on the fifth day after the date the notice is mailed. A revocation or prohibition under Subsection (e) or (f) takes effect on the 30th day after the date the notice is mailed. The person may request a hearing not later than the 20th day after the date the notice is mailed. If the department receives a request under this subsection, the department shall set the hearing for the earliest practical time and the revocation or prohibition does not take effect until resolution of the hearing.
- (h) The hearing shall be held in a municipal or justice court in the county of the person's residence in the manner provided for a suspension hearing under Subchapter N. The issues to be determined at the hearing are whether the person has successfully completed a required educational program and whether the period for completion of the program has passed. If the presiding officer determines that the educational program has not been completed and the period for completion has passed, the officer shall confirm the revocation or prohibition and shall notify the department of that fact. The director may not revoke or prohibit the license if the officer finds that the program has been completed, that, before the hearing, the court that originally imposed the requirement to attend an educational program has granted an extension that has not expired, or that the period for completion has not passed. If the person or the person's agent fails to appear at the hearing, the department shall revoke the person's license until the department receives notice of successful completion of the educational program.
- (i) On the date that a suspension order under Section 521.343(c) is to expire, the period of suspension or the corresponding period in which the department is prohibited from issuing a license is automatically increased to two years unless the

department receives notice of successful completion of the educational program as required by Section 13, Article 42.12, Code of Criminal Procedure. At the time a person is convicted of an offense under Section 49.04 or 49.045, Penal Code, the court shall warn the person of the effect of this subsection. On the person's successful completion of the program, the person's instructor shall give notice to the department and to the community supervision and corrections department in the manner required by Section 13, Article 42.12, Code of Criminal Procedure. If the department receives proof of completion after a period has been extended under this subsection, the department shall immediately end the suspension or prohibition.

**§ 521.345. Suspension on Order of Juvenile Court or on Order of Court Based on Alcoholic Beverage Violation by Minor**

- (a) The department shall suspend the license of a person on receipt of an order to suspend the license that is issued by:
  - (1) a juvenile court under Section 54.042, Family Code; or
  - (2) a court under Section 106.115, Alcoholic Beverage Code.
- (b) The period of suspension is for the period specified in the order.

**§ 521.346. Suspension on Conviction of Certain Fraudulent Activities**

- (a) If an individual is convicted of an offense under Section 521.451 or 521.453, the period of suspension shall be for the period set by the court of not less than 90 days or more than one year.
- (b) If the court does not set the period, the department shall suspend the license for one year.

**SUBCHAPTER S. MISCELLANEOUS OFFENSES**

**§ 521.451. General Violation**

- (a) Except as provided by Section 521.452, a person may not:
  - (1) display, cause or permit to be displayed, or have in the person's possession a driver's license or certificate that the person knows is fictitious or has been altered;
  - (2) lend the person's driver's license or certificate to another person or knowingly permit another person to use the person's driver's license or certificate;
  - (3) display or represent as the person's own a driver's license or certificate not issued to the person;
  - (4) possess more than one currently valid driver's license or more than one currently valid certificate; or
  - (5) in an application for an original, renewal, or duplicate driver's license or certificate:
    - (A) provide a false name, false address, or a counterfeit document; or
    - (B) knowingly make a false statement, conceal a material fact, or otherwise commit fraud.
- (b) An offense under this section is a Class B misdemeanor.

**§ 521.452. Alias Driver's License for Law Enforcement Purposes**

- (a) After written approval by the director, the department may issue to a law enforcement officer an alias driver's license to be used in supervised activities involving a criminal investigation.
- (b) An application for, or possession or use of, an alias driver's license for a purpose described by this section by the officer to whom the license is issued is not a violation of this subchapter unless the department has canceled, suspended, or revoked the license.

**§ 521.453. Fictitious License or Certificate**

- (a) Except as provided by Subsection (f), a person under the age of 21 years commits an offense if the person possesses, with the intent to represent that the person is 21 years of age or older, a document that is deceptively similar to a driver's license or a personal identification certificate unless the document displays the statement "NOT A GOVERNMENT DOCUMENT" diagonally printed clearly and indelibly on both the front and back of the document in solid red capital letters at least one-fourth inch in height.
- (b) For purposes of this section, a document is deceptively similar to a driver's license or personal identification certificate if a reasonable person would assume that it was issued by the department, another agency of this state, another state, or the United States.
- (c) A peace officer listed in Article 2.12, Code of Criminal Procedure, may confiscate a document that:
  - (1) is deceptively similar to a driver's license or personal identification certificate; and
  - (2) does not display the statement required under Subsection (a).
- (d) For purposes of this section, an offense under Subsection (a) is a Class C misdemeanor.
- (e) The attorney general, district attorney, or prosecuting attorney performing the duties of the district attorney may bring an action to enjoin a violation or threatened violation of this section. The action must be brought in a court in the county in which the violation or threatened violation occurs.
- (f) Subsection (a) does not apply to:
  - (1) a government agency, office, or political subdivision that is authorized to produce or sell personal identification certificates; or
  - (2) a person that provides a document similar to a personal identification certificate to an employee of the person for a business purpose.
- (g) In this section:

- (1) "Driver's license" includes a driver's license issued by another state or by the United States.
- (2) "Personal identification certificate" means a personal identification certificate issued by the department, by another agency of this state, by another state, or by the United States.
- (h) In addition to the punishment provided by Subsection (d), a court, if the court is located in a municipality or county that has established a community service program, may order a person younger than 21 years of age who commits an offense under this section to perform eight hours of community service unless the person is shown to have previously committed an offense under this section, in which case the court may order the person to perform 12 hours of community service.
- (i) If the person ordered to perform community service under Subsection (h) is younger than 17 years of age, the community service shall be performed as if ordered by a juvenile court under Section 54.044(a), Family Code, as a condition of probation under Section 54.04(d), Family Code.

#### **§ 521.454. False Application**

- (a) A person commits an offense if the person knowingly swears to or affirms falsely before a person authorized to take statements under oath any matter, information, or statement required by the department in an application for an original, renewal, or duplicate driver's license or certificate issued under this chapter.
- (b) An information or indictment for a violation of Subsection (a) that alleges that the declarant has made inconsistent statements under oath, both of which cannot be true, need not allege which statement is false and the prosecution is not required to prove which statement is false.
- (c) An offense under this section is a Class A misdemeanor.
- (d) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

#### **§ 521.455. Use of Illegal License or Certificate**

- (a) A person commits an offense if the person intentionally or knowingly uses a driver's license or certificate obtained in violation of Section 521.451 or 521.454 to harm or defraud another.
- (b) An offense under this section is a Class A misdemeanor.

#### **§ 521.456. Delivery or Manufacture Of Counterfeit Instrument**

- (a) A person commits an offense if the person possesses with the intent to sell, distribute, or deliver a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class A misdemeanor.
- (b) A person commits an offense if the person manufactures or produces with the intent to sell, distribute, or deliver a forged or counterfeit instrument that the person knows is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a felony of the third degree.
- (c) A person commits an offense if the person possesses with the intent to use, circulate, or pass a forged or counterfeit instrument that is not printed, manufactured, or made by or under the direction of, or issued, sold, or circulated by or under the direction of, a person, board, agency, or authority authorized to do so under this chapter or under the laws of the United States, another state, or a Canadian province. An offense under this subsection is a Class C misdemeanor.
- (d) For purposes of this section, "instrument" means a driver's license, driver's license form, personal identification certificate, stamp, permit, license, official signature, certificate, evidence of fee payment, or any other instrument.
- (e) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

#### **§ 521.457. Driving While License Invalid**

- (a) A person commits an offense if the person operates a motor vehicle on a highway:
  - (1) after the person's driver's license has been canceled under this chapter if the person does not have a license that was subsequently issued under this chapter;
  - (2) during a period that the person's driver's license or privilege is suspended or revoked under any law of this state;
  - (3) while the person's driver's license is expired if the license expired during a period of suspension imposed under:
  - (4) after renewal of the person's driver's license has been denied under Chapter 706, if the person does not have a driver's license subsequently issued under this chapter.
- (b) A person commits an offense if the person is the subject of an order issued under this chapter or Chapter 724 that prohibits the person from obtaining a driver's license and the person operates a motor vehicle on a highway.
- (c) It is not a defense to prosecution under this section that the person did not receive actual notice of a suspension imposed as a result of a conviction for an offense under Section 521.341.
- (d) Except as provided by Subsection (c), it is an affirmative defense to prosecution of an offense, other than an offense under Section 521.341, that the person did not receive actual notice of a cancellation, suspension, revocation, or prohibition order.

relating to the person's license. For purposes of this section, actual notice is presumed if the notice was mailed in accordance with law.

- (e) Except as provided by Subsection (f), an offense under this section is a misdemeanor punishable by:
  - (1) a fine of not less than \$100 or more than \$500; and
  - (2) confinement in county jail for a term of not less than 72 hours or more than six months.
- (f) If it is shown on the trial of an offense under this section that the person has previously been convicted of an offense under this section or Section 601.371(a), the offense is a Class A misdemeanor.
- (g) For purposes of this section, a conviction for an offense that involves operation of a motor vehicle after August 31, 1987, is a final conviction, regardless of whether the sentence for the conviction is probated.

#### **§ 521.458. Permitting Unauthorized Person to Drive**

- (a) A person may not knowingly permit or cause the person's child or ward who is under 18 years of age to operate a motor vehicle on a highway in violation of this chapter.
- (b) A person may not authorize or knowingly permit a motor vehicle owned by or under the control of the person to be operated on a highway by any person in violation of this chapter.

#### **§ 521.459. Employment of Unlicensed Driver**

- (a) Before employing a person as an operator of a motor vehicle used to transport persons or property, an employer shall request from the department:
  - (1) a list of convictions for traffic violations contained in the department records on the potential employee; and
  - (2) a verification that the person has a license.
- (b) A person may not employ a person as an operator of a motor vehicle used to transport persons or property who does not hold the appropriate driver's license to operate the vehicle as provided by this chapter.

#### **§ 521.460. Motor Vehicle Rentals**

- (a) A person may not rent a motor vehicle to any other person unless the other person holds a driver's license under this chapter or, if a nonresident, holds a license issued under the laws of the state or Canadian province in which the person resides, unless that state or province does not require that the operator of a motor vehicle hold a license.
- (b) A person may not rent a motor vehicle to another person until inspecting the driver's license of the renter and comparing and verifying the signature on the renter's driver's license with the renter's signature written in the person's presence.
- (c) Each person who rents a motor vehicle to another shall maintain a record of:
  - (1) the number of the license plate issued for the motor vehicle;
  - (2) the name and address of the person to whom the vehicle is rented;
  - (3) the license number of the person to whom the vehicle is rented;
  - (4) the date the license was issued; and
  - (5) the place where the license was issued.
- (d) The record maintained under Subsection (c) may be inspected by any police officer or officer or employee of the department.

#### **§ 521.461. General Criminal Penalty**

- (a) A person who violates a provision of this chapter for which a specific penalty is not provided commits an offense.
- (b) An offense under this section is a misdemeanor punishable by a fine not to exceed \$200.

### **TRANSPORTATION CODE**

#### **Chapter 524. Administrative Suspension of Driver's License for Failure to Pass Test for Intoxication**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§ 524.001. Definitions**

In this chapter:

- (1) "Adult" means an individual 21 years of age or older.
- (2) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.
- (3) "Alcohol-related or drug-related enforcement contact" means a driver's license suspension, disqualification, or prohibition order under the laws of this state or another state resulting from:
  - (A) a conviction of an offense prohibiting the operation of a motor vehicle or watercraft while:
    - (i) intoxicated;
    - (ii) under the influence of alcohol; or
    - (iii) under the influence of a controlled substance;
  - (B) a refusal to submit to the taking of a breath or blood specimen following an arrest for an offense prohibiting the operation of a motor vehicle or an offense prohibiting the operation of a watercraft, if the watercraft was powered with an engine having a manufacturer's rating of 50 horsepower or more, while:
    - (i) intoxicated;



- (ii) under the influence of alcohol; or
- (iii) under the influence of a controlled substance; or
- (C) an analysis of a breath or blood specimen showing an alcohol concentration of a level specified by Section 49.01, Penal Code, following an arrest for an offense prohibiting the operation of a motor vehicle or watercraft while intoxicated.
- (4) "Arrest" includes the taking into custody of a child, as defined by Section 51.02, Family Code.
- (5) "Conviction" includes an adjudication under Title 3, Family Code.
- (6) "Criminal charge" includes a charge that may result in a proceeding under Title 3, Family Code.
- (7) "Criminal prosecution" includes a proceeding under Title 3, Family Code.
- (8) "Department" means the Department of Public Safety.
- (9) "Director" means the public safety director of the department.
- (10) "Driver's license" has the meaning assigned by Section 521.001. The term includes a commercial driver's license or a commercial driver learner's permit issued under Chapter 522.
- (11) "Minor" means an individual under 21 years of age.
- (12) "Public place" has the meaning assigned by Section 1.07(a), Penal Code.

**§ 524.002. Rules; Application of Administrative Procedure Act**

- (a) The department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.
- (b) Chapter 2001, Government Code, applies to a proceeding under this chapter to the extent consistent with this chapter.
- (c) The State Office of Administrative Hearings may adopt a rule that conflicts with Chapter 2001, Government Code, if a conflict is necessary to expedite the hearings process within the time required by this chapter and applicable federal funding guidelines.

**SUBCHAPTER B. SUSPENSION DETERMINATION AND NOTICE**

**§ 524.011. Officer's Duties for Driver's License Suspension**

- (a) An officer arresting a person shall comply with Subsection (b) if:
  - (1) the person is arrested for an offense under Section 49.04, 49.045, or 49.06 Penal Code, or an offense under Section 49.07 or 49.08 of that code involving the operation of a motor vehicle or watercraft, submits to the taking of a specimen of breath or blood and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code; or
  - (2) the person is a minor arrested for an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle and:
    - (A) the minor is not requested to submit to the taking of a specimen; or
    - (B) the minor submits to the taking of a specimen and an analysis of the specimen shows that the minor had an alcohol concentration of greater than .00 but less than the level specified by Section 49.01(2)(B), Penal Code.
- (b) A peace officer shall:
  - (1) serve or, if a specimen is taken and the analysis of the specimen is not returned to the arresting officer before the person is admitted to bail, released from custody, delivered as provided by Title 3, Family Code, or committed to jail, attempt to serve notice of driver's license suspension by delivering the notice to the arrested person;
  - (2) take possession of any driver's license issued by this state and held by the person arrested;
  - (3) issue a temporary driving permit to the person unless department records show or the officer otherwise determines that the person does not hold a driver's license to operate a motor vehicle in this state; and
  - (4) send to the department not later than the fifth business day after the date of the arrest:
    - (A) a copy of the driver's license suspension notice;
    - (B) any driver's license taken by the officer under this subsection;
    - (C) a copy of any temporary driving permit issued under this subsection; and
    - (D) a sworn report of information relevant to the arrest.
- (c) The report required under Subsection (b)(2)(B) must:
  - (1) identify the arrested person;
  - (2) state the arresting officer's grounds for believing the person committed the offense;
  - (3) give the analysis of the specimen if any; and
  - (4) include a copy of the criminal complaint filed in the case, if any.
- (d) A peace officer shall make the report on a form approved by the department and in the manner specified by the department.
- (e) The department shall develop forms for the notice of driver's license suspension and temporary driving permits to be used by all state and local law enforcement agencies.
- (f) A temporary driving permit issued under this section expires on the 41st day after the date of issuance. If the person was driving a commercial motor vehicle, as defined by Section 522.003, a temporary driving permit that authorizes the person to drive a commercial motor vehicle is not effective until 24 hours after the time of arrest.

**§ 524.012. Department's Determination for Driver's License Suspension**

- (a) On receipt of a report under Section 524.011, if the officer did not serve a notice of suspension of driver's license at the time the results of the analysis of a breath or blood specimen were obtained, the department shall determine from the information in the report whether to suspend the person's driver's license.
- (b) The department shall suspend the person's driver's license if the department determines that:
  - (1) the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place or while operating a watercraft; or
  - (2) the person was a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft.
- (c) The department may not suspend a person's driver's license if:
  - (1) the person is an adult and the analysis of the person's breath or blood specimen determined that the person had an alcohol concentration of a level below that specified by Section 49.01(2)(B), Penal Code, at the time the specimen was taken; or
  - (2) the person was a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft.
- (d) A determination under this section is final unless a hearing is requested under Section 524.031.
- (e) A determination under this section:
  - (1) is a civil matter;
  - (2) is independent of and is not an estoppel to any matter in issue in an adjudication of a criminal charge arising from the occurrence that is the basis for the suspension; and
  - (3) does not preclude litigation of the same or similar facts in a criminal prosecution.

**§ 524.013. Notice of Department's Determination**

- (a) If the department suspends a person's driver's license, the department shall send a notice of suspension by first class mail to the person's address:
  - (1) in the records of the department; or
  - (2) in the peace officer's report if it is different from the address in the department's records.
- (b) Notice is considered received on the fifth day after the date the notice is mailed.
- (c) If the department determines not to suspend a person's driver's license, the department shall notify the person of that determination and shall rescind any notice of driver's license suspension served on the person.

**§ 524.014. Notice of Suspension**

A notice of suspension under Section 524.013 must state:

- (1) the reason and statutory grounds for the suspension;
- (2) the effective date of the suspension;
- (3) the right of the person to a hearing;
- (4) how to request a hearing; and
- (5) the period in which the person must request a hearing.

**§ 524.015. Effect of Disposition of Criminal Charge on Driver's License Suspension**

- (a) Except as provided by Subsection (b), the disposition of a criminal charge does not affect a driver's license suspension under this chapter and does not bar any matter in issue in a driver's license suspension proceeding under this chapter.
- (b) A suspension may not be imposed under this chapter on a person who is acquitted of a criminal charge under Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, arising from the occurrence that was the basis for the suspension. If a suspension was imposed before the acquittal, the department shall rescind the suspension and shall remove any reference to the suspension from the person's computerized driving record.

**SUBCHAPTER C. SUSPENSION PROVISIONS**

**§ 524.021. Suspension Effective Date**

- (a) A driver's license suspension under this chapter takes effect on the 40th day after the date the person:
  - (1) receives a notice of suspension under Section 524.011; or
  - (2) is presumed to have received notice of suspension under Section 524.013.
- (b) A suspension under this chapter may not be probated.

**§ 524.022. Period of Suspension**

- (a) A period of suspension under this chapter for an adult is:
  - (1) 90 days if the person's driving record shows no alcohol-related or drug-related enforcement contact during the 10 years preceding the date of the person's arrest; or
  - (2) one year if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts during the 10 years preceding the date of the person's arrest.
- (b) A period of suspension under this chapter for a minor is:

- (1) 60 days if the minor has not been previously convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, or 49.06, Penal Code, or an offense under Section 49.07 or 49.08, Penal Code, involving the operation of a motor vehicle or a watercraft;
- (2) 120 days if the minor has been previously convicted once of an offense listed by Subdivision (1); or
- (3) 180 days if the minor has been previously convicted twice or more of an offense listed by Subdivision (1).
- (c) For the purposes of determining whether a minor has been previously convicted of an offense described by Subsection (b)(1):
  - (1) an adjudication under Title 3, Family Code, that the minor engaged in conduct described by Subsection (b)(1) is considered a conviction under that provision; and
  - (2) an order of deferred adjudication for an offense alleged under a provision described by Subsection (b)(1) is considered a conviction of an offense under that provision.
- (d) A minor whose driver's license is suspended under this chapter is not eligible for an occupational license under Subchapter L, Chapter 521, for:
  - (1) the first 30 days of a suspension under Subsection (b)(1);
  - (2) the first 90 days of a suspension under Subsection (b)(2); or
  - (3) the entire period of a suspension under Subsection (b)(3).

**§ 524.023. Application of Suspension Under Other Laws**

- (a) If a person is convicted of an offense under Section 106.041, Alcoholic Beverage Code, or Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, and if any conduct on which that conviction is based is a ground for a driver's license suspension under this chapter and Section 106.041, Alcoholic Beverage Code, Subchapter O, Chapter 521, or Subchapter H, Chapter 522, each of the suspensions shall be imposed.
- (b) The court imposing a driver's license suspension under Section 106.041, Alcoholic Beverage Code, or Chapter 521 or 522 as required by Subsection (a) shall credit a period of suspension imposed under this chapter toward the period of suspension required under Section 106.041, Alcoholic Beverage Code, or Subchapter O, Chapter 521, or Subchapter H, Chapter 522, unless the person was convicted of an offense under Article 6701/-1, Revised Statutes, as that law existed before September 1, 1994, Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994, Section 49.04, 49.045, 49.06, 49.07, or 49.08, Penal Code, or Section 106.041, Alcoholic Beverage Code, before the date of the conviction on which the suspension is based, in which event credit may not be given.

**SUBCHAPTER D. HEARING AND APPEAL**

**§ 524.031. Hearing Request**

If, not later than the 15th day after the date on which the person receives notice of suspension under Section 524.011 or is presumed to have received notice under Section 524.013, the department receives at its headquarters in Austin, in writing, including a facsimile transmission, or by another manner prescribed by the department, a request that a hearing be held, a hearing shall be held as provided by this subchapter.

**§ 524.032. Hearing Date; Rescheduling**

- (a) A hearing requested under this subchapter shall be held not earlier than the 11th day after the date on which the person requesting the hearing is notified of the hearing unless the parties agree to waive this requirement. The hearing shall be held before the effective date of the suspension.
- (b) A hearing shall be rescheduled if, before the fifth day before the date scheduled for the hearing, the department receives a request for a continuance from the person who requested the hearing. Unless both parties agree otherwise, the hearing shall be rescheduled for a date not earlier than the fifth day after the date the department receives the request for the continuance.
- (c) A person who requests a hearing under this chapter may obtain only one continuance under this section unless the person shows that a medical condition prevents the person from attending the rescheduled hearing, in which event one additional continuance may be granted for a period not to exceed 10 days.
- (d) A request for a hearing stays suspension of a person's driver's license until the date of the final decision of the administrative law judge. If the person's driver's license was taken by a peace officer under Section 524.011(b), the department shall notify the person of the effect of the request on the suspension of the person's license before the expiration of any temporary driving permit issued to the person, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's driver's license is not suspended.

**§ 524.033. State Office of Administrative Hearings**

- (a) A hearing under this subchapter shall be heard by an administrative law judge employed by the State Office of Administrative Hearings.
- (b) The State Office of Administrative Hearings shall provide for the stenographic or electronic recording of the hearing.

**§ 524.034. Hearing Location**

A hearing under this subchapter shall be held:

- (1) at a location designated by the State Office of Administrative Hearings:

- (A) in the county of arrest if the arrest occurred in a county with a population of 300,000 or more; or
- (B) in the county in which the person is alleged to have committed the offense for which the person was arrested or not more than 75 miles from the county seat of the county in which the person was arrested; or
- (2) with the consent of the person and the department, by telephone conference call.

#### § 524.035. Hearing

- (a) The issues that must be proved at a hearing by a preponderance of the evidence are:
  - (1) whether:
    - (A) the person had an alcohol concentration of a level specified by Section 49.01(2)(B), Penal Code, while operating a motor vehicle in a public place or while operating a watercraft; or
    - (B) the person was a minor on the date that the breath or blood specimen was obtained and had any detectable amount of alcohol in the minor's system while operating a motor vehicle in a public place or while operating a watercraft; and
  - (2) whether reasonable suspicion to stop or probable cause to arrest the person existed.
- (b) If the administrative law judge finds in the affirmative on each issue in Subsection (a), the suspension is sustained.
- (c) If the administrative law judge does not find in the affirmative on each issue in Subsection (a), the department shall:
  - (1) return the person's driver's license to the person, if the license was taken by a peace officer under Section 524.011(b);
  - (2) reinstate the person's driver's license; and
  - (3) rescind an order prohibiting the issuance of a driver's license to the person.
- (d) An administrative law judge may not find in the affirmative on the issue in Subsection (a)(1) if:
  - (1) the person is an adult and the analysis of the person's breath or blood determined that the person had an alcohol concentration of a level below that specified by Section 49.01, Penal Code, at the time the specimen was taken; or
  - (2) the person was a minor on the date that the breath or blood specimen was obtained and the administrative law judge does not find that the minor had any detectable amount of alcohol in the minor's system when the minor was arrested.
- (e) The decision of the administrative law judge is final when issued and signed.

#### § 524.036. Failure to Appear

A person who requests a hearing and fails to appear without just cause waives the right to a hearing and the department's determination is final.

#### § 524.037. Continuance

- (a) A continuance under Section 524.032 stays the suspension of a driver's license until the date of the final decision of the administrative law judge.
- (b) A suspension order may not go into effect pending a final decision of the administrative law judge as a result of a continuance granted under Section 524.039.
- (c) If the person's driver's license was taken by a peace officer under Section 524.011(b), the department shall notify the person of the effect of the continuance on the suspension of the person's license before the expiration of any temporary driving permit issued to the person, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's driver's license is not suspended.

#### § 524.038. Instrument Reliability and Analysis Validity

- (a) The reliability of an instrument used to take or analyze a specimen of a person's breath to determine alcohol concentration and the validity of the results of the analysis may be attested to in a proceeding under this subchapter by affidavit from the certified breath test technical supervisor responsible for maintaining and directing the operation of breath test instruments in compliance with department rule.
- (b) An affidavit submitted under Subsection (a) must contain statements on:
  - (1) the reliability of the instrument and the analytical results; and
  - (2) compliance with state law in the administration of the program.
- (c) An affidavit of an expert witness contesting the reliability of the instrument or the results is admissible.
- (d) An affidavit from a person whose presence is timely requested under this section is inadmissible if the person fails to appear at a hearing without a showing of good cause. Otherwise, an affidavit under this section may be submitted in lieu of an appearance at the hearing by the breath test operator, breath test technical supervisor, or expert witness.

#### § 524.039. Appearance of Technicians at Hearing

(a) Not later than the fifth day before the date of a scheduled hearing, the person who requested a hearing may apply to the State Office of Administrative Hearings to issue a subpoena for the attendance of the breath test operator who took the specimen of the person's breath to determine alcohol concentration or the certified breath test technical supervisor responsible for maintaining and directing the operation of the breath test instrument used to analyze the specimen of the person's breath, or both. The State Office of Administrative Hearings shall issue the subpoena only on a showing of good cause.

(b) The department may reschedule a hearing once not less than 48 hours before the hearing if a person subpoenaed under Subsection (a) is unavailable. The department may also reschedule the hearing on showing good cause that a person subpoenaed under Subsection (a) is not available at the time of the hearing.

#### **§ 524.040. Notice Requirements**

- (a) Notice required to be provided by the department under this subchapter may be given by telephone or other electronic means. If notice is given by telephone or other electronic means, written notice must also be provided.
- (b) Notice by mail is considered received on the fifth day after the date the notice is deposited with the United States Postal Service.

#### **§ 524.041. Appeal From Administrative Hearing**

- (a) A person whose driver's license suspension is sustained may appeal the decision by filing a petition not later than the 30th day after the date the administrative law judge's decision is final. The administrative law judge's final decision is immediately appealable without the requirement of a motion for rehearing.
- (b) A petition under Subsection (a) must be filed in a county court at law in the county in which the person was arrested or, if there is not a county court at law in the county, in the county court. If the county judge is not a licensed attorney, the county judge shall transfer the case to a district court for the county on the motion of either party or of the judge.
- (c) A person who files an appeal under this section shall send a copy of the petition by certified mail to the department and to the State Office of Administrative Hearings at each agency's headquarters in Austin. The copy must be certified by the clerk of the court in which the petition is filed.
- (d) The department's right to appeal is limited to issues of law.
- (e) A district or county attorney may represent the department in an appeal.

#### **§ 524.042. Stay of Suspension on Appeal**

- (a) A suspension of a driver's license under this chapter is stayed on the filing of an appeal petition only if:
  - (1) the person's driver's license has not been suspended as a result of an alcohol-related or drug-related enforcement contact during the five years preceding the date of the person's arrest; and
  - (2) the person has not been convicted during the 10 years preceding the date of the person's arrest of an offense under:
    - (A) Article 6701I-1, Revised Statutes, as that law existed before September 1, 1994;
    - (B) Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994;
    - (C) Section 49.04, 49.045, or 49.06, Penal Code;
    - (D) Section 49.07 or 49.08, Penal Code, if the offense involved the operation of a motor vehicle; or a watercraft or
    - (E) Section 106.041, Alcoholic Beverage Code.
- (b) A stay under this section is effective for not more than 90 days after the date the appeal petition is filed. On the expiration of the stay, the department shall impose the suspension. The department or court may not grant an extension of the stay or an additional stay.

#### **§ 524.043. Review; Additional Evidence**

- (a) Review on appeal is on the record certified by the State Office of Administrative Hearings with no additional testimony.
- (b) On appeal, a party may apply to the court to present additional evidence. If the court is satisfied that the additional evidence is material and that there were good reasons for the failure to present it in the proceeding before the administrative law judge, the court may order that the additional evidence be taken before an administrative law judge on conditions determined by the court.
- (c) There is no right to a jury trial in an appeal under this section.
- (d) An administrative law judge may change a finding or decision as to whether the person had an alcohol concentration of a level specified in Section 49.01, Penal Code, or whether a minor had any detectable amount of alcohol in the minor's system because of the additional evidence and shall file the additional evidence and any changes, new findings, or decisions with the reviewing court.
- (e) A remand under this section does not stay the suspension of a driver's license.

#### **§ 524.044. Transcript of Administrative Hearing**

- (a) To obtain a transcript of an administrative hearing, the party who appeals the administrative law judge's decision must apply to the State Office of Administrative Hearings.
- (b) On payment of a fee not to exceed the actual cost of preparing the transcript, the State Office of Administrative Hearings shall promptly furnish both parties with a transcript of the administrative hearing.

### **SUBCHAPTER E. REINSTATEMENT AND REISSUANCE OF DRIVER'S LICENSE**

#### **§ 524.051. Reinstatement and Reissuance**

- (a) A driver's license suspended under this chapter may not be reinstated or another driver's license issued to the person until the person pays the department a fee of \$125 in addition to any other fee required by law.
- (b) The payment of a reinstatement fee is not required if a suspension under this chapter is:
  - (1) rescinded by the department; or
  - (2) not sustained by an administrative law judge, or a court.



- (c) Each fee collected under this section shall be deposited to the credit of the Texas mobility fund.

## **TRANSPORTATION CODE**

### **Chapter 601. Motor Vehicle Safety Responsibility Act**

#### **§ 601.002. Definitions**

In this chapter:

- (8) "Operator" means the person in actual physical control of a motor vehicle.

## **TRANSPORTATION CODE**

### **Chapter 704. Forfeiture of Certain Motor Vehicles**

#### **§ 704.001. Grounds for Forfeiture; Notice**

- (a) A motor vehicle is subject to forfeiture if the vehicle is owned and operated at the time of an offense under Section 49.04, Penal Code, or an offense under Section 49.07 or 49.08 of that code involving the operation of a motor vehicle, by a person who:
- (1) at the time of arrest was under community supervision for an offense under:
    - (A) Section 49.08, Penal Code; or
    - (B) Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994; or
  - (2) has previously been finally convicted three or more times of:
    - (A) an offense under Section 49.04, Penal Code;
    - (B) an offense under Section 49.07, Penal Code, that involves operation of a motor vehicle;
    - (C) an offense under Section 49.08, Penal Code;
    - (D) an offense under Article 6701I-1, Revised Statutes, as that law existed before September 1, 1994;
    - (E) an offense under Article 6701I-2, Revised Statutes, as that law existed before January 1, 1984;
    - (F) an offense under Section 19.05(a)(2), Penal Code, as that law existed before September 1, 1994; or
    - (G) any combination of offenses under the statutes listed in Paragraphs (A)-(F).
- (b) The officer who arrests a person described by Subsection (a) shall immediately notify the district or county attorney of that fact.
- (c) A vehicle forfeited under this chapter is forfeited to the county in which the offense occurred.

#### **§ 704.002. Temporary Restraining Order Prohibiting Disposition of Vehicle Pending Trial of Offense**

- (a) The district or county attorney may seek a temporary restraining order prohibiting a person described by Section 704.001(a) from selling or disposing of a vehicle described by that subsection and may, not later than the 20th day after the date of the arrest, request a hearing in a county court or district court in the county to determine whether the vehicle is subject to forfeiture.
- (b) The court in which the hearing is to be held shall set the cause for a hearing to be held not later than the 20th day after the date on which the district or county attorney requests the hearing. The court shall serve notice of the hearing in the manner provided for service of process by citation in a civil case to the owner of the vehicle and to any lienholder or other secured party whose interest in the vehicle is registered as provided by law.
- (c) If, at a hearing requested under Subsection (a), the person arrested fails to file a denial stating that the vehicle is not subject to forfeiture, the court shall find that the vehicle is subject to forfeiture. If the person files a denial stating that the vehicle is not subject to forfeiture, the court shall hear evidence to determine whether the vehicle is subject to forfeiture.
- (d) If the court determines that the vehicle is subject to forfeiture, the court shall enter an order enjoining the person from selling or disposing of the vehicle pending the outcome of the prosecution of the person for the offense for which the person was arrested. The court shall specify in the order that if the person is acquitted of the offense for which the person was arrested, the injunction expires on the date of the acquittal. If, after the court has issued an order under this subsection, the person proves by document or other evidence satisfactory to the court that prosecution for the offense has been dismissed, the court shall terminate the injunction.

#### **§ 704.003. Forfeiture of Vehicle Following Conviction**

- (a) If a person described by Section 704.001(a) is convicted at the trial for the offense for which the person is arrested, the court sentencing the person may forfeit the vehicle:
- (1) on the motion of the district or county attorney;
  - (2) after notice and hearing; and
  - (3) on a showing that a court has determined that the vehicle is subject to forfeiture.
- (b) If proof at sentencing discloses that a person, including a lienholder or secured party, holds a security interest in the vehicle that is greater than or equal to the present value of the vehicle, the court shall order the vehicle released to the person holding the security interest. If that interest is less than the present value of the vehicle, the court may forfeit the vehicle.

#### **§ 704.004. Sale of Forfeited Vehicle; Certificate of Title**

- (a) A vehicle that has been forfeited under this chapter shall be sold at a public auction under the direction of the sheriff after notice of public auction as provided by law for other sheriff's sales.
- (b) The proceeds of the sale shall be delivered to the county clerk and shall be paid to any party holding a security interest in the vehicle, including a lienholder or secured party, to the extent of the interest. The balance, if any, shall be deposited in the county treasury.
- (c) The Texas Department of Transportation shall issue a certificate of title to a person who purchases a vehicle under this section and who complies with Chapter 501.

#### **§ 709.001. Traffic fine for conviction of certain intoxicated driver offenses.**

- a. In this section, "offense relating to the operating of a motor vehicle while intoxicated" has the meaning assigned by Section 49.09, Penal Code.
- b. Except as provided by subsection (c), in addition to the fine prescribed for the specific offense, a person who has been finally convicted of an offense relating to the operating of a motor vehicle while intoxicated shall pay a fine of:
  - (1) \$3,000 for the first conviction within a 36-month period;
  - (2) \$4,500 for a second or subsequent conviction within a 36-month period;
  - (3) \$6,000 for a first or subsequent conviction if it is shown on the trial of the offense that an analysis of a specimen of the person's blood, breath, or urine showed an alcohol concentration level of 0.15 or more at the time the analysis was performed.
- c. If the court having jurisdiction over an offense that is the basis for a fine imposed under this section makes a finding that the person is indigent, the court shall waive all fines and costs imposed on the person under this section.

### **TRANSPORTATION CODE**

#### **Chapter 724. Implied Consent**

#### **SUBCHAPTER A. GENERAL PROVISIONS**

##### **§ 724.001. Definitions**

In this chapter:

- (1) "Alcohol concentration" has the meaning assigned by Section 49.01, Penal Code.
- (2) "Arrest" includes the taking into custody of a child, as defined by Section 51.02, Family Code.
- (3) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.
- (4) "Criminal charge" includes a charge that may result in a proceeding under Title 3, Family Code.
- (5) "Criminal proceeding" includes a proceeding under Title 3, Family Code.
- (6) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.
- (7) "Department" means the Department of Public Safety.
- (8) "Drug" has the meaning assigned by Section 481.002, Health and Safety Code.
- (9) "Intoxicated" has the meaning assigned by Section 49.01, Penal Code.
- (10) "License" has the meaning assigned by Section 521.001.
- (11) "Operate" means to drive or be in actual control of a motor vehicle or watercraft.
- (12) "Public place" has the meaning assigned by Section 1.07, Penal Code.

##### **§ 724.002. Applicability**

The provisions of this chapter that apply to suspension of a license for refusal to submit to the taking of a specimen (Sections 724.013, 724.015, and 724.048 and Subchapters C and D) apply only to a person arrested for an offense involving the operation of a motor vehicle or watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above.

##### **§ 724.003. Rulemaking**

The department and the State Office of Administrative Hearings shall adopt rules to administer this chapter.

#### **SUBCHAPTER B. TAKING AND ANALYSIS OF SPECIMEN**

##### **§ 724.011. Consent to Taking of Specimen**

- (a) If a person is arrested for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle in a public place, or a watercraft, while intoxicated, or an offense under Section 106.041, Alcoholic Beverage Code, the person is deemed to have consented, subject to this chapter, to submit to the taking of one or more specimens of

the person's breath or blood for analysis to determine the alcohol concentration or the presence in the person's body of a controlled substance, drug, dangerous drug, or other substance.

- (b) A person arrested for an offense described by Subsection (a) may consent to submit to the taking of any other type of specimen to determine the person's alcohol concentration.

#### **§ 724.012. Taking of Specimen**

- (a) One or more specimens of a person's breath or blood may be taken if the person is arrested and at the request of a peace officer having reasonable grounds to believe the person:
  - (1) while intoxicated was operating a motor vehicle in a public place, or a watercraft; or
  - (2) was in violation of Section 106.041, Alcoholic Beverage Code.
- (b) A peace officer shall require the taking of a specimen of the person's breath or blood under any of the following circumstances if the officer arrests the person for an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft and the person refuses the officer's request to submit to the taking of a specimen voluntarily:
  - (1) the person was the operator of a motor vehicle or a watercraft involved in an accident that the officer reasonably believes occurred as a result of the offense and at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident;
    - (A) any individual has died or will die;
    - (B) an individual other than the person has suffered serious bodily injury; or
    - (C) an individual other than the person has suffered bodily injury and been transported to a hospital or other medical facility for medical treatment;
  - (2) the offense for which the officer arrests the person is an offense under Section 49.045, Penal Code; or
  - (3) at the time of the arrest, the officer possesses or receives reliable information from a credible source that the person:
    - (A) has been previously convicted of or placed on community supervision for an offense under Section 49.045, 49.07, or 49.08, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections; or
    - (B) on two or more occasions, has been previously convicted of or placed on community supervision for an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or an offense under the laws of another state containing elements substantially similar to the elements of an offense under those sections
- (c) In this section, "bodily injury" and "serious bodily injury" have the meanings assigned by Section 1.07, Penal Code.

#### **§ 724.013. Prohibition on Taking Specimen if Person Refuses; Exception**

Except as provided by Section 724.012(b), a specimen may not be taken if a person refuses to submit to the taking of a specimen designated by a peace officer.

#### **§ 724.014. Person Incapable of Refusal**

- (a) A person who is dead, unconscious, or otherwise incapable of refusal is considered not to have withdrawn the consent provided by Section 724.011.
- (b) If the person is dead, a specimen may be taken by:
  - (1) the county medical examiner or the examiner's designated agent; or
  - (2) a licensed mortician or a person authorized under Section 724.016 or 724.017 if there is not a county medical examiner for the county.
- (c) If the person is alive but is incapable of refusal, a specimen may be taken by a person authorized under Section 724.016 or 724.017.

#### **§ 724.015. Information Provided by Officer Before Requesting Specimen**

Before requesting a person to submit to the taking of a specimen, the officer shall inform the person orally and in writing that:

- (1) if the person refuses to submit to the taking of the specimen, that refusal may be admissible in a subsequent prosecution;
- (2) if the person refuses to submit to the taking of the specimen, the person's license to operate a motor vehicle will be automatically suspended, whether or not the person is subsequently prosecuted as a result of the arrest, for not less than 180 days;
- (3) if the person refuses to submit to the taking of a specimen, the officer may apply for a warrant authorizing a specimen to be taken from the person;
- (4) if the person is 21 years of age or older and submits to the taking of a specimen designated by the officer and an analysis of the specimen shows the person had an alcohol concentration of a level specified by Chapter 49, Penal Code, the person's license to operate a motor vehicle will be automatically suspended for not less than 90 days, whether or not the person is subsequently prosecuted as a result of the arrest;
- (5) if the person is younger than 21 years of age and has any detectable amount of alcohol in the person's system, the person's license to operate a motor vehicle will be automatically suspended for not less than 60 days even if the person submits to the taking of the specimen, but that if the person submits to the taking of the specimen and an analysis of the specimen shows that the person had an alcohol concentration less than the level specified by Chapter 49, Penal Code, the person may be subject to criminal penalties less severe than those provided under that chapter;

- (6) if the officer determines that the person is a resident without a license to operate a motor vehicle in this state, the department will deny to the person the issuance of a license, whether or not the person is subsequently prosecuted as a result of the arrest, under the same conditions and for the same periods that would have applied to a revocation of the person's driver's license if the person had held a driver's license issued by this state; and
- (7) the person has a right to a hearing on the suspension or denial if, not later than the 15th day after the date on which the person receives the notice of suspension or denial or on which the person is considered to have received the notice by mail as provided by law, the department receives, at its headquarters in Austin, a written demand, including a facsimile transmission, or a request in another form prescribed by the department for the hearing.

#### **§ 724.016. Breath Specimen**

- (a) A breath specimen taken at the request or order of a peace officer must be taken and analyzed under rules of the department by an individual possessing a certificate issued by the department certifying that the individual is qualified to perform the analysis.
- (b) The department may:
  - (1) adopt rules approving satisfactory analytical methods; and
  - (2) ascertain the qualifications of an individual to perform the analysis.
- (c) The department may revoke a certificate for cause.

#### **§ 724.017. Blood Specimen**

- (a) Only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse may take a blood specimen at the request or order of a peace officer under this chapter. The blood specimen must be taken in a sanitary place.
- (b) If the blood specimen was taken according to recognized medical procedures, the person who takes the blood specimen under this chapter, the facility that employs the person who takes the blood specimen, or the hospital where the blood specimen is taken is immune from civil liability for damages arising from the taking of the blood specimen at the request or order of the peace officer or pursuant to a search warrant as provided by this chapter and is not subject to discipline by any licensing or accrediting agency or body. This subsection does not relieve a person from liability for negligence in the taking of a blood specimen. The taking of a specimen from a person who objects to the taking of the specimen or who is resisting the taking of the specimen does not in itself constitute negligence and may not be considered evidence of negligence.
- (c) In this section, "qualified technician" does not include emergency medical services personnel.
- (d) A person whose blood specimen is taken under this chapter in a hospital is not considered to be present in the hospital for medical screening or treatment unless the appropriate hospital personnel determine that medical screening or treatment is required for proper medical care of the person.

#### **§ 724.018. Furnishing Information Concerning Test Results**

On the request of a person who has given a specimen at the request of a peace officer, full information concerning the analysis of the specimen shall be made available to the person or the person's attorney.

#### **§ 724.019. Additional Analysis by Request**

- (a) A person who submits to the taking of a specimen of breath, blood, urine, or another bodily substance at the request or order of a peace officer may, on request and within a reasonable time not to exceed two hours after the arrest, have a physician, qualified technician, chemist, or registered professional nurse selected by the person take for analysis an additional specimen of the person's blood.
- (b) If the blood specimen was taken according to recognized medical procedures, the person who takes the blood specimen under this chapter, the facility that employs the person who takes the blood specimen, or the hospital where the blood specimen is taken is immune from civil liability for damages arising from the taking of the blood specimen at the request or order of the peace officer or pursuant to a search warrant as provided by this chapter and is not subject to discipline by any licensing or accrediting agency or body. This subsection does not relieve a person from liability for negligence in the taking of a blood specimen. The taking of a specimen from a person who objects to the taking of the specimen or who is resisting the taking of the specimen does not in itself constitute negligence and may not be considered evidence of negligence.
- (c) A peace officer or law enforcement agency is not required to transport for testing a person who requests that a blood specimen be taken under this section.
- (d) A person whose blood specimen is taken under this chapter in a hospital is not considered to be present in the hospital for medical screening or treatment unless the appropriate hospital personnel determine that medical screening or treatment is required for proper medical care of the person.
- (e) A peace officer, another person acting for or on behalf of the state, or a law enforcement agency is not liable for damages arising from a person's request to have a blood specimen taken.

### **SUBCHAPTER C. SUSPENSION OR DENIAL OF LICENSE ON REFUSAL OF SPECIMEN**

#### **§ 724.031. Statement Requested on Refusal**

If a person refuses the request of a peace officer to submit to the taking of a specimen, the peace officer shall request the person to sign a statement that:

- (1) the officer requested that the person submit to the taking of a specimen;
- (2) the person was informed of the consequences of not submitting to the taking of a specimen; and

- (3) the person refused to submit to the taking of a specimen.

**§ 724.032. Officer's Duties for License Suspension; Written Refusal Report.**

- (a) If a person refuses to submit to the taking of a specimen, whether expressly or because of an intentional failure of the person to give the specimen, the peace officer shall:
  - (1) serve notice of license suspension or denial on the person;
  - (2) take possession of any license issued by this state and held by the person arrested;
  - (3) issue a temporary driving permit to the person unless department records show or the officer otherwise determines that the person does not hold a license to operate a motor vehicle in this state; and
  - (4) make a written report of the refusal to the director of the department.
- (b) The director must approve the form of the refusal report. The report must:
  - (1) show the grounds for the officer's belief that the person had been operating a motor vehicle or watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above while intoxicated; and
  - (2) contain a copy of:
    - (A) the refusal statement requested under Section 724.031; or
    - (B) a statement signed by the officer that the person refused to:
      - (i) submit to the taking of the requested specimen; and
      - (ii) sign the requested statement under Section 724.031.
- (c) The officer shall forward to the department not later than the fifth business day after the date of the arrest:
  - (1) a copy of the notice of suspension or denial;
  - (2) any license taken by the officer under Subsection (a);
  - (3) a copy of any temporary driving permit issued under Subsection (a); and
  - (4) a copy of the refusal report.
- (d) The department shall develop forms for notices of suspension or denial and temporary driving permits to be used by all state and local law enforcement agencies.
- (e) A temporary driving permit issued under this section expires on the 41st day after the date of issuance. If the person was driving a commercial motor vehicle, as defined by Section 522.003, a temporary driving permit that authorizes the person to drive a commercial motor vehicle is not effective until 24 hours after the time of arrest.

**§ 724.033. Issuance by Department of Notice of Suspension or Denial of License**

- (a) On receipt of a report of a peace officer under Section 724.032, if the officer did not serve notice of suspension or denial of a license at the time of refusal to submit to the taking of a specimen, the department shall mail notice of suspension or denial, by first class mail, to the address of the person shown by the records of the department or to the address given in the peace officer's report, if different.
- (b) Notice is considered received on the fifth day after the date it is mailed.

**§ 724.034. Contents of Notice of Suspension or Denial of License**

A notice of suspension or denial of a license must state:

- (1) the reason and statutory grounds for the action;
- (2) the effective date of the suspension or denial;
- (3) the right of the person to a hearing;
- (4) how to request a hearing; and
- (5) the period in which a request for a hearing must be received by the department.

**§ 724.035. Suspension or Denial of License**

- (a) If a person refuses the request of a peace officer to submit to the taking of a specimen, the department shall:
  - (1) suspend the person's license to operate a motor vehicle on a public highway for 180 days; or
  - (2) if the person is a resident without a license, issue an order denying the issuance of a license to the person for 180 days.
- (b) The period of suspension or denial is two years if the person's driving record shows one or more alcohol-related or drug-related enforcement contacts, as defined by Section 524.001(3), during the 10 years preceding the date of the person's arrest.
- (c) A suspension or denial takes effect on the 40th day after the date on which the person:
  - (1) receives notice of suspension or denial under Section 724.032(a); or
  - (2) is considered to have received notice of suspension or denial under Section 724.033.

**SUBCHAPTER D. HEARING**

**§ 724.041. Hearing on Suspension or Denial**

- (a) If, not later than the 15th day after the date on which the person receives notice of suspension or denial under Section 724.032(a) or is considered to have received notice under Section 724.033, the department receives at its headquarters in Austin, in writing, including a facsimile transmission, or by another manner prescribed by the department, a request that a hearing be held, the State Office of Administrative Hearings shall hold a hearing.
- (b) A hearing shall be held not earlier than the 11th day after the date the person is notified, unless the parties agree to waive this requirement, but before the effective date of the notice of suspension or denial.



- (c) A request for a hearing stays the suspension or denial until the date of the final decision of the administrative law judge. If the person's license was taken by a peace officer under Section 724.032(a), the department shall notify the person of the effect of the request on the suspension of the person's license before the expiration of any temporary driving permit issued to the person, if the person is otherwise eligible, in a manner that will permit the person to establish to a peace officer that the person's license is not suspended.
- (d) A hearing shall be held by an administrative law judge employed by the State Office of Administrative Hearings.
- (e) A hearing shall be held:
  - (1) at a location designated by the State Office of Administrative Hearings:
    - (A) in the county of arrest if the county has a population of 300,000 or more; or
    - (B) in the county in which the person was alleged to have committed the offense for which the person was arrested or not more than 75 miles from the county seat of the county of arrest if the population of the county of arrest is less than 300,000; or
  - (2) with the consent of the person requesting the hearing and the department, by telephone conference call.
- (f) The State Office of Administrative Hearings shall provide for the stenographic or electronic recording of a hearing under this subchapter.
- (g) An administrative hearing under this section is governed by Sections 524.032(b) and (c), 524.035(e), 524.037(a), and 524.040.

#### **§ 724.042. Issues at Hearing**

The issues at a hearing under this subchapter are whether:

- (1) reasonable suspicion or probable cause existed to stop or arrest the person;
- (2) probable cause existed to believe that the person was:
  - (A) operating a motor vehicle in a public place while intoxicated; or
  - (B) operating a watercraft powered with an engine having a manufacturer's rating of 50 horsepower or above while intoxicated;
- (3) the person was placed under arrest by the officer and was requested to submit to the taking of a specimen; and
- (4) the person refused to submit to the taking of a specimen on request of the officer.

#### **§ 724.043. Findings of Administrative Law Judge**

- (a) If the administrative law judge finds in the affirmative on each issue under Section 724.042, the suspension order is sustained. If the person is a resident without a license, the department shall continue to deny to the person the issuance of a license for the applicable period provided by Section 724.035.
- (b) If the administrative law judge does not find in the affirmative on each issue under Section 724.042, the department shall return the person's license to the person, if the license was taken by a peace officer under Section 724.032(a), and reinstate the person's license or rescind any order denying the issuance of a license because of the person's refusal to submit to the taking of a specimen under Section 724.032(a).

#### **§ 724.044. Waiver of Right to Hearing**

A person waives the right to a hearing under this subchapter and the department's suspension or denial is final and may not be appealed if the person:

- (1) fails to request a hearing under Section 724.041; or
- (2) requests a hearing and fails to appear, without good cause.

#### **§ 724.045. Prohibition on Probation of Suspension**

A suspension under this chapter may not be probated.

#### **§ 724.046. Reinstatement of License or Issuance of New License**

- (a) A license suspended under this chapter may not be reinstated or a new license issued until the person whose license has been suspended pays to the department a fee of \$125 in addition to any other fee required by law. A person subject to a denial order issued under this chapter may not obtain a license after the period of denial has ended until the person pays to the department a fee of \$125 in addition to any other fee required by law.
- (b) If a suspension or denial under this chapter is rescinded by the department, an administrative law judge, or a court, payment of the fee under this section is not required for reinstatement or issuance of a license.

#### **§ 724.047. Appeal**

Chapter 524 governs an appeal from an action of the department, following an administrative hearing under this chapter, in suspending or denying the issuance of a license.

#### **§ 724.048. Relationship of Administrative Proceeding to Criminal Proceeding**

- (a) The determination of the department or administrative law judge:
  - (1) is a civil matter;

- (2) is independent of and is not an estoppel as to any matter in issue in an adjudication of a criminal charge arising from the occurrence that is the basis for the suspension or denial; and
- (3) does not preclude litigation of the same or similar facts in a criminal prosecution.
- (b) Except as provided by Subsection (c), the disposition of a criminal charge does not affect a license suspension or denial under this chapter and is not an estoppel as to any matter in issue in a suspension or denial proceeding under this chapter.
- (c) If a criminal charge arising from the same arrest as a suspension under this chapter results in an acquittal, the suspension under this chapter may not be imposed. If a suspension under this chapter has already been imposed, the department shall rescind the suspension and remove references to the suspension from the computerized driving record of the individual.

## **SUBCHAPTER E. ADMISSIBILITY OF EVIDENCE**

### **§ 724.061. Admissibility of Refusal of Person to Submit to Taking of Specimen**

A person's refusal of a request by an officer to submit to the taking of a specimen of breath or blood, whether the refusal was express or the result of an intentional failure to give the specimen, may be introduced into evidence at the person's trial.

### **§ 724.062. Admissibility of Refusal of Request for Additional Test**

The fact that a person's request to have an additional analysis under Section 724.019 is refused by the officer or another person acting for or on behalf of the state, that the person was not provided a reasonable opportunity to contact a person specified by Section 724.019(a) to take the specimen, or that reasonable access was not allowed to the arrested person may be introduced into evidence at the person's trial.

### **§ 724.063. Admissibility of Alcohol Concentration or Presence of Substance**

Evidence of alcohol concentration or the presence of a controlled substance, drug, dangerous drug, or other substance obtained by an analysis authorized by Section 724.014 is admissible in a civil or criminal action.

### **§ 724.064. Admissibility in Criminal Proceeding of Specimen Analysis**

On the trial of a criminal proceeding arising out of an offense under Chapter 49, Penal Code, involving the operation of a motor vehicle or a watercraft, or an offense under Section 106.041, Alcoholic Beverage Code, evidence of the alcohol concentration or presence of a controlled substance, drug, dangerous drug, or other substance as shown by analysis of a specimen of the person's blood, breath, or urine or any other bodily substance taken at the request or order of a peace officer is admissible.

## **FAMILY CODE**

### **Chapter 51. General Provisions**

#### **§ 51.02. Definitions**

In this title:

- (1) "Aggravated controlled substance felony" means an offense under Subchapter D, Chapter 481, Health and Safety Code, that is punishable by:
  - (A) a minimum term of confinement that is longer than the minimum term of confinement for a felony of the first degree; or
  - (B) a maximum fine that is greater than the maximum fine for a felony of the first degree.
- (2) "Child" means a person who is:
  - (A) ten years of age or older and under 17 years of age; or
  - (B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.
- (3) "Custodian" means the adult with whom the child resides.
- (4) "Guardian" means the person who, under court order, is the guardian of the person of the child or the public or private agency with whom the child has been placed by a court.
- (5) "Judge" or "juvenile court judge" means the judge of a juvenile court.
- (6) "Juvenile court" means a court designated under Section 51.04 of this code to exercise jurisdiction over proceedings under this title.
- (7) "Law-enforcement officer" means a peace officer as defined by Article 2.12, Code of Criminal Procedure.
- (8) "Nonoffender" means a child who:
  - (A) is subject to jurisdiction of a court under abuse, dependency, or neglect statutes under Title 5 for reasons other than legally prohibited conduct of the child; or
  - (B) has been taken into custody and is being held solely for deportation out of the United States.
- (9) "Parent" means the mother or the father of a child, but does not include a parent whose parental rights have been terminated.
- (10) "Party" means the state, a child who is the subject of proceedings under this subtitle, or the child's parent, spouse, guardian, or guardian ad litem.
- (11) "Prosecuting attorney" means the county attorney, district attorney, or other attorney who regularly serves in a prosecutory capacity in a juvenile court.
- (12) "Referral to juvenile court" means the referral of a child or a child's case to the office or official, including an intake officer or probation officer, designated by the juvenile board to process children within the juvenile justice system.

- (13) "Secure correctional facility" means any public or private residential facility, including an alcohol or other drug treatment facility, that:
  - (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and
  - (B) is used for the placement of any juvenile who has been adjudicated as having committed an offense, any nonoffender, or any other individual convicted of a criminal offense.
- (14) "Secure detention facility" means any public or private residential facility that:
  - (A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and
  - (B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or any other individual accused of having committed a criminal offense.
- (15) "Status offender" means a child who is accused, adjudicated, or convicted for conduct that would not, under state law, be a crime if committed by an adult, including:
  - (A) truancy under Section 51.03(b)(2);
  - (B) running away from home under Section 51.03(b)(3);
  - (C) a fineable only offense under Section 51.03(b)(1) transferred to the juvenile court under Section 51.08(b), but only if the conduct constituting the offense would not have been criminal if engaged in by an adult;
  - (D) failure to attend school under Section 25.094, Education Code;
  - (E) a violation of standards of student conduct as described by Section 51.03(b)(5);
  - (F) a violation of a juvenile curfew ordinance or order;
  - (G) a violation of a provision of the Alcoholic Beverage Code applicable to minors only; or
  - (H) a violation of any other fineable only offense under Section 8.07(a)(4) or (5), Penal Code, but only if the conduct constituting the offense would not have been criminal if engaged in by an adult.
- (16) "Traffic offense" means:
  - (A) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for:
    - (i) conduct constituting an offense under Section 550.021, Transportation Code;
    - (ii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.022, Transportation Code; or
    - (iii) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.024, Transportation Code; or
    - (iv) conduct constituting an offense punishable as a Class B misdemeanor under Section 550.025, Transportation Code; or
  - (B) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.
- (17) "Valid court order" means a court order entered under Section 54.04 concerning a child adjudicated to have engaged in conduct indicating a need for supervision as a status offender.

**§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision**

- (a) Delinquent conduct is:
  - (1) conduct, other than a traffic offense, that violates a penal law of this state or of the United States punishable by imprisonment or by confinement in jail;
  - (2) conduct that violates a lawful order of a municipal court or justice court under circumstances that would constitute contempt of that court;
  - (A) a justice or municipal court; or
  - (B) a county court for conduct punishable only by a fine;
  - (3) conduct that violates Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code; or
  - (4) conduct that violates Section 106.041, Alcoholic Beverage Code, relating to driving under the influence of alcohol by a minor (third or subsequent offense).
- (b) Conduct indicating a need for supervision is:
  - (1) subject to Subsection (f), conduct, other than a traffic offense, that violates:
    - (A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or
    - (B) the penal ordinances of any political subdivision of this state;
  - (2) the absence of a child on 10 or more days or parts of days within a six-month period in the same school year or on three or more days or parts of days within a four-week period from school;
  - (3) the voluntary absence of a child from the child's home without the consent of the child's parent or guardian for a substantial length of time or without intent to return;
  - (4) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives and the volatile chemicals itemized in Section 484.002, Health and Safety Code;
  - (5) an act that violates a school district's previously communicated written standards of student conduct for which the child has been expelled under Section 37.007(c), Education Code; or
  - (6) conduct that violates a reasonable and lawful order of a court entered under Section 264.305.
- (c) Nothing in this title prevents criminal proceedings against a child for perjury.

- (d) It is an affirmative defense to an allegation of conduct under Subsection (b)(2) that one or more of the absences required to be proven under that subsection have been excused by a school official or should be excused by the court or that one of the absences was involuntary. The burden is on the respondent to show by a preponderance of the evidence that the absence has been or should be excused or that the absence was involuntary. A decision by the court to excuse an absence for purposes of this subsection does not affect the ability of the school district to determine whether to excuse the absence for another purpose.
- (e) For the purposes of Subsection (b)(3), "child" does not include a person who is married, divorced, or widowed.
- (f) Except as provided by Subsection (g), conduct described under Subsection (b)(1) does not constitute conduct indicating a need for supervision unless the child has been referred to the juvenile court under Section 51.08(b).
- (g) In a county with a population of less than 100,000, conduct described by Subsection (b)(1)(A) that violates Section 25.094, Education Code, is conduct indicating a need for supervision.

**§ 51.031. Habitual Felony Conduct**

- (a) Habitual felony conduct is conduct violating a penal law of the grade of felony, other than a state jail felony, if:
  - (1) the child who engaged in the conduct has at least two previous final adjudications as having engaged in delinquent conduct violating a penal law of the grade of felony;
  - (2) the second previous final adjudication is for conduct that occurred after the date the first previous adjudication became final; and
  - (3) all appeals relating to the previous adjudications considered under Subdivisions (1) and (2) have been exhausted.
- (b) For purposes of this section, an adjudication is final if the child is placed on probation or committed to the Texas Youth Commission.
- (c) An adjudication based on conduct that occurred before January 1, 1996, may not be considered in a disposition made under this section.

**§ 51.04. Jurisdiction**

- (a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time the person engaged in the conduct, and, except as provided by Subsection (h), the juvenile court has exclusive original jurisdiction over proceedings under this title.
- (b) In each county, the county's juvenile board shall designate one or more district, criminal district, domestic relations, juvenile, or county courts or county courts at law as the juvenile court, subject to Subsections (c) and (d) of this section.
- (c) If the county court is designated as a juvenile court, at least one other court shall be designated as the juvenile court. A county court does not have jurisdiction of a proceeding involving a petition approved by a grand jury under Section 53.045 of this code.
- (d) If the judge of a court designated in Subsection (b) or (c) of this section is not an attorney licensed in this state, there shall also be designated an alternate court, the judge of which is an attorney licensed in this state.
- (e) A designation made under Subsection (b) or (c) of this section may be changed from time to time by the authorized boards or judges for the convenience of the people and the welfare of children. However, there must be at all times a juvenile court designated for each county. It is the intent of the legislature that in selecting a court to be the juvenile court of each county, the selection shall be made as far as practicable so that the court designated as the juvenile court will be one which is presided over by a judge who has a sympathetic understanding of the problems of child welfare and that changes in the designation of juvenile courts be made only when the best interest of the public requires it.
- (f) If the judge of the juvenile court or any alternate judge named under Subsection (b) or (c) is not in the county or is otherwise unavailable, any magistrate may make a determination under Section 53.02(f) or may conduct the detention hearing provided for in Section 54.01.
- (g) The juvenile board may appoint a referee to make determinations under Section 53.02(f) or to conduct hearings under this title. The referee shall be an attorney licensed to practice law in this state and shall comply with Section 54.10. Payment of any referee services shall be provided from county funds.
- (h) In a county with a population of less than 100,000, the juvenile court has concurrent jurisdiction with the justice and municipal courts over conduct engaged in by a child that violates Section 25.094, Education Code.

**§ 51.041. Jurisdiction After Appeal**

- (a) The court retains jurisdiction over a person, without regard to the age of the person, for conduct engaged in by the person before becoming 17 years of age if, as a result of an appeal by the person under Chapter 56 or under Article 44.47, Code of Criminal Procedure, of an order of the court, the order is reversed or modified and the case remanded to the court by the appellate court.
- (b) If the respondent is at least 18 years of age when the order of remand from the appellate court is received by the juvenile court, the juvenile court shall proceed as provided by Sections 54.02(o)-(r) for the detention of a person at least 18 years of age in discretionary transfer proceedings. Pending retrial of the adjudication or transfer proceeding, the juvenile court may:
  - (1) order the respondent released from custody;
  - (2) order the respondent detained in a juvenile detention facility; or

- (3) set bond and order the respondent detained in a county adult facility if bond is not made.

**§ 51.0411. Jurisdiction for Transfer or Release Hearing**

The court retains jurisdiction over a person, without regard to the age of the person, who is referred to the court under Section 54.11 for transfer to the Texas Department of Criminal Justice or release under supervision.

**§ 51.0412. Jurisdiction Over Incomplete Proceedings**

The court retains jurisdiction over a person, without regard to the age of the person, who is a respondent in an adjudication proceeding, a disposition proceeding, or a proceeding to modify disposition if:

- (1) the petition or motion to modify was filed while the respondent was younger than 18 years of age;
- (2) the proceeding is not complete before the respondent becomes 18 years of age; and
- (3) the court enters a finding in the proceeding that the prosecuting attorney exercised due diligence in an attempt to complete the proceeding before the respondent became 18 years of age.

**§ 51.042. Objection to Jurisdiction Because of Age of the Child**

- (a) A child who objects to the jurisdiction of the court over the child because of the age of the child must raise the objection at the adjudication hearing or discretionary transfer hearing, if any. Revised July 2004
- (b) A child who does not object as provided by Subsection (a) waives any right to object to the jurisdiction of the age of the child at a later hearing or on appeal.

**FAMILY CODE**

**Chapter 54. Judicial Proceedings**

**§ 54.042. License Suspension. [Suspension of license.]**

- (a) A juvenile court, in a disposition hearing under Section 54.04, shall:
  - (1) order the Department of Public Safety to suspend a child's driver's license or permit, or if the child does not have a license or permit, to deny the issuance of a license or permit to the child if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section 521.342(a), Transportation Code; or
  - (2) notify the Department of Public Safety of the adjudication, if the court finds that the child has engaged in conduct that violates a law of this state enumerated in Section 521.372(a), Transportation Code.
- (b) A juvenile court, in a disposition hearing under Section 54.04, may order the Department of Public Safety to suspend a child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child, if the court finds that the child has engaged in conduct that violates Section 28.08, Penal Code.
- (c) The order under Subsection (a)(1) shall specify a period of suspension or denial that is until the child reaches the age of 19 or for a period of 365 days, whichever is longer.
- (d) The order under Subsection (b) shall specify a period of suspension or denial that is:
  - (1) for a period not to exceed 365 days; or
  - (2) if the court finds the child has been previously adjudicated as having engaged in conduct violating Section 28.08, Penal Code, until the child reaches the age of 19 or for a period not to exceed 365 days, whichever is longer.
- (e) A child whose driver's license or permit has been suspended or denied pursuant to this section may, if the child is otherwise eligible for, and fulfils the requirements for issuance of, a provisional driver's license or permit under Chapter 521, Transportation Code, apply for and receive an occupational license in accordance with the provisions of Subchapter L of that chapter.
- (f) A juvenile court, in a disposition hearing under Section 54.04, may order the Department of Public Safety to suspend a child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed 12 months if the court finds that the child has engaged in conduct in need of supervision or delinquent conduct other than the conduct described by Subsection (a).
- (g) A juvenile court that places a child on probation under Section 54.04 may require as a reasonable condition of the probation that if the child violates the probation, the court may order the Department of Public Safety to suspend the child's driver's license or permit or, if the child does not have a license or permit, to deny the issuance of a license or permit to the child for a period not to exceed 12 months. The court may make this order if a child that is on probation under this condition violates the probation. A suspension under this subsection is cumulative of any other suspension under this section.
- (h) If a child is adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, and if any conduct on which that adjudication is based is a ground for a driver's license suspension under Chapter 524 or 724, Transportation Code, each of the suspensions shall be imposed. The court imposing a driver's license suspension under this section shall credit a period of suspension imposed under Chapter 524 or 724, Transportation Code, toward the period of suspension required under this section, except that if the child was previously adjudicated for conduct that violates Section 49.04, 49.07, or 49.08, Penal Code, credit may not be given.

**§ 54.047. Alcohol Related Offense**



If the court or jury finds at an adjudication hearing for a child that the child engaged in conduct indicating a need for supervision or delinquent conduct that violates the alcohol-related offenses in Section 106.02, 106.025, 106.04, 106.05, or 106.07, Alcoholic Beverage Code, or Section 49.02, Penal Code, the court shall, subject to a finding under Section 54.04(c), order, in addition to any other order authorized by this title, that, in the manner provided by Section 106.071(d), Alcoholic Beverage Code:

- (1) the child perform community service; and
- (2) the child's driver's license or permit be suspended or that the child be denied issuance of a driver's license or permit.