

## **UNDERAGED DRINKING**

### **Purchase, Consumption, Possession, or Transportation of Liquor or Malt or Brewed Beverages**

A person commits a summary offense if he or she, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses, or knowingly and intentionally transports any liquor or malt or brewed beverages. For these purposes, it is not a defense that the liquor or malt or brewed beverage was consumed in a jurisdiction other than the jurisdiction where the citation for underage drinking was issued.

A preliminary breath test ("pbt") is reliable to discern the presence or absence of alcohol in a suspect's blood, so that the results are admissible to support a charge of underage drinking, and they create a rebuttable presumption that the defendant has engaged in the prohibited activity. However, a positive preliminary breath test result is not *per se* proof that the defendant has engaged in underage drinking and he or she may present evidence to establish that the positive result was not the result of illegal ingestion of alcohol. However, in a prosecution for underage drinking, it is not always necessary for the Commonwealth to have direct evidence of the alcoholic content of the beverage consumed; a conviction can be based on circumstantial evidence.

#### **EXAMPLES**

In a prosecution for underage drinking, the evidence was sufficient to show that the defendant had consumed a malt or brewed beverage within the meaning of the statute:

- where the defendant was intoxicated and it could therefore be inferred that she drank a beverage that was more than half of 1% alcohol;
- where the Commonwealth established that there was alcohol in sufficient quantity to intoxicate the defendant and, therefore, through logical inference, that the beverage contained at least 0.5% alcohol by volume where the Commonwealth's witnesses testified that the defendant was intoxicated;
- even though the arresting officer did not see the defendant actually consume, possess or transport alcohol where the officer detected an odor of alcohol on the defendant and a breathalyzer test yielded a result of .04% alcohol.

#### **Additional penalties and consequences**

In addition to the penalty that may be imposed pursuant to the statute relating to restriction of operating privileges, a person convicted of violating the foregoing provision may be sentenced to pay a fine of not more than the amount specified in the statute for the second and each subsequent violation. Loss of driving privileges is a civil collateral consequence of a conviction for underage drinking. Thus, there is no requirement that a defendant know of such penalty at the time of a guilty plea.

**Illustration:** The suspension of a minor's driver's license for a second conviction for violating the prohibition against the purchase, consumption, possession or transportation of alcohol by a minor did not violate the minor's right to equal protection or due process since there was a rational basis for the legislature to conclude that suspension of a minor's driver's license promotes traffic safety by removing drinking minors from state roads.

The police department making an arrest for a suspected violation of the foregoing provision must so notify the parents or guardian of the minor charged.

**Pre-adjudication disposition**

When a person is charged with violating the statutory provision relating to the purchase, consumption, possession or transportation of liquor or malt or brewed beverages, the magisterial district justice ("MDJ") may, if the offender has not previously received a pre-adjudication disposition for violating such provision, admit the offender to the adjudication alternative authorized by the statute relating to adjudication alternative program or to any other pre-adjudication disposition. For the purpose of further adjudication under this provision or under the provision relating to restriction of operating privileges the use of a pre-adjudication disposition must be considered as a first or subsequent offense, whichever is applicable.

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