

UNDERAGE DRINKING – THE CALL WE ALL GET

I. **AT THE PARTY** Cooperation, PBT, questioning, identification, conduct, parents, general advice (cups, keg, others).

II. **AFTER THE PARTY**

A. **Option 1: Underage Drinking Court**

1. May be done pre-citation or post-citation.
2. Process: Obtain application from MDJ or Judge Lovecchio's Chambers.

Information and application may be obtained from website

lycomingcountyunderagedrinkingcourt.com, contact police officer to obtain recommendation, submit application, receipt of tentative approval, assessment through West Branch, approval (case transferred to court).

3. UDC Requirements: six court sessions, community service, graduation project, counseling, education, cost of \$150.00.
4. Outcomes: If successfully graduate, officer and MDJ are notified, case dismissed or citation not filed.

If terminated from Underage Drinking Court, Order is entered finding the individual guilty and sentencing the individual to pay costs, a fine in the amount of \$300.00; Penn DOT is notified and a license suspension is imposed.

B. **Option 2: Alternative Disposition**

After receipt of citation, attend the hearing and attempt to negotiate alternative disposition such as a plea to a summary offense or ordinance violation. Consider: age, employment, license status, school obligations, career plans. Advantages are no license suspension. Disadvantages include costs and fines (up to \$300) and summary record.

C. Option 3: Defend against citation

1. BURDEN OF PROOF

(a) A person commits a summary offense if he, 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 as defined in § 631.0.6. 18 Pa. C.S.A. § 6308. The Commonwealth must prove age, the proscribed conduct and prohibited beverage.

(b) Age is sufficiently established through observing driver's license or admission. The Commonwealth is not required to present a birth certificate or copy of driver's license. Commonwealth v. Elliott, 599 A.2d 1335 (Pa. Super. 1991).

(c) PBT test is inadmissible. Commonwealth v. Brigidi, 6 A.3d 995 (Pa. 2010).

(d) Blood or breath tests are not required. Officer's testimony alone may be sufficient. Commonwealth v. Roda, 17 D & C 4th 352 (1992), aff'd without opinion, 636 A.2d 1215 (Pa. Super. 1993); see also Commonwealth v. Webster, 681 A.2d 806 (Pa. Super. 1996).

(e) Courts look at totality of the circumstances, including but not limited to, the individual's demeanor and conduct, the odor of an alcoholic beverage, the presence of alcoholic beverages, indicia of drinking and statements of Defendant. Cannot use silence as an admission except for impeachment purposes. Commonwealth v. Molina, 33 A.3d 51 (Pa. Super. 2011), appeal granted, 51 A.3d 181 (Pa. 2012).

(f) It is not a defense that the liquor or brewed beverage was consumed in a jurisdiction other than the jurisdiction where the citation for underage drinking was issued. 18 Pa. C.S.A. § 6308 (a); reversing common law decisions in Commonwealth v. Elliott, 8 Pa. D.& C. 486 (1990); Commonwealth v. O'Brien, 8 Pa. D.& C. 441 (1990).

(g) Establishing the prohibited beverage may be via circumstantial evidence or judicial notice. Commonwealth v. Piccirillo, 21 Pa. D.& C. 4th 250 (1993), Commonwealth v. Weller, 581 A.2d 1390 (Pa. Super. 1990); Commonwealth v. Harvey, 666 A.2d 1108 (Pa. Super. 1995).

2. MOTIONS TO SUPPRESS

(a) There are three categories of interactions between citizens and police. The first is a mere encounter which may be supported by any level of suspicion, but carries no official compulsion to stop or respond. The second is an investigative detention which must be supported by reasonable suspicion; it subjects a suspect to a stop and detention but it does not involve such conditions as to constitute the functional equivalent of an arrest. Finally, an arrest or custodial detention must be supported by probable cause. Commonwealth v. Guess, 2012 PA Super 196 (September 13, 2012), citing Commonwealth v. Hudson, 995 A.2d 1253, 1256-57 (Pa. Super. 2010).

(b) The pivotal inquiry is whether a reasonable person innocent of any crime would have thought that he or she was being restrained had he or she been in the Defendant's shoes. Of course, the Court must examine all surrounding circumstances evidencing a show of authority or exercise of force including the demeanor of the police officer, the manner of expression used by the officer in addressing the citizen,

and the content of the interrogatories or statements. Commonwealth v. Key, 789 A.2d 282, 288-89 (Pa. Super. 2001).

(c) Example of circumstances that might indicate a seizure, even when the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. Commonwealth v. McCleave, 750 A.2d 320, 324-25 (Pa. Super. 2000).

(d) In the underage drinking context, in order to conduct an investigative detention, the officers must have reasonable suspicion. There must be individualized observation of specific conduct such as drinking alcohol or indicia of intoxication. Commonwealth v. Mistler, 869 A.2d 497 (Pa. Super. 2005). While flight alone is not sufficient for probable cause, it may be considered a factor for reasonable suspicion. Commonwealth v. Banks, 658 A.2d 752 (Pa. 1995).

(e) Miranda . Miranda rights are required prior to custodial interrogation. Custodial interrogation is questioning initiated by law enforcement after a person has been taken into custody or otherwise deprived of his or her freedom of action in a significant way. Commonwealth v. Gonzalez, 979 A.2d 879 (Pa. Super. 2009). Detentions become custodial when, under the totality of the circumstances, the conditions and/or duration of the detention become so coercive as to constitute the functional equivalent of arrest. Id. Statements made by an individual during an encounter with police, such as spontaneous utterances, small talk or volunteered statements, are not subject to Miranda protections. Id. Biographical information is

not incriminating and Miranda rights not required. Commonwealth v. Garvin, 2012 PA Super 112 (May 30, 2012).

(f) Procedure. Generally, defects in procedures or content must be raised before conclusion of summary case. Pa. R. Cr. P. 109. In summary cases, however, late filing may be permitted “when the interests of justice require it.” Pa.R.Cr.P. 109, comment. Raise suppression issues before MDJ. File Motion to Suppress in summary appeal before Court of Common Pleas.

3. PENALTY

(a) Costs; fine of not more than \$300.00 (first offense). \$500.00 (second or subsequent offenses).

(b) Suspension of operating privilege – 90 days for first offense, one year for 2nd offense and 2 years for a third or subsequent offense. 18 Pa. C.S.A. § 6310.4 (b). Suspension starts at 16 years of age if under 16 at time offense was committed.

(c) An occupational limited license authorizes an individual to drive a designated motor vehicle under conditions, when it is necessary for the driver’s occupation, work, trade, medical treatment or study. One may obtain an occupational limited license if the underage alcohol violation is his or her first offense. Submit application on Penn DOT website.

III. AFTER CONVICTION

A. Criminal Record History – No, if not fingerprinted. But, may find through search of MDJ records, DA records, Penn DOT records.

B. Underage drinking conviction – May be expunged when the individual turns 21. A Petition must be filed in the Court of Common Pleas where the conviction occurred. In order to obtain expungement, all of the conditions of the sentence must

be satisfied and the license suspension must have been served. Upon review of the Petition, the Court must order expungement of all criminal history, administrative records and all Penn DOT records. 18 Pa. C.S.A. § 9122 (a) (3).

C. Expungement of other Summary Offenses – May occur five years following a conviction. A Petition must be filed in the Court of Common Pleas where the conviction occurred and must assert that the Defendant has been free of arrest or prosecution for five years following the conviction. 18 Pa. C.S.A. § 9122 (b) (3) (ii).