



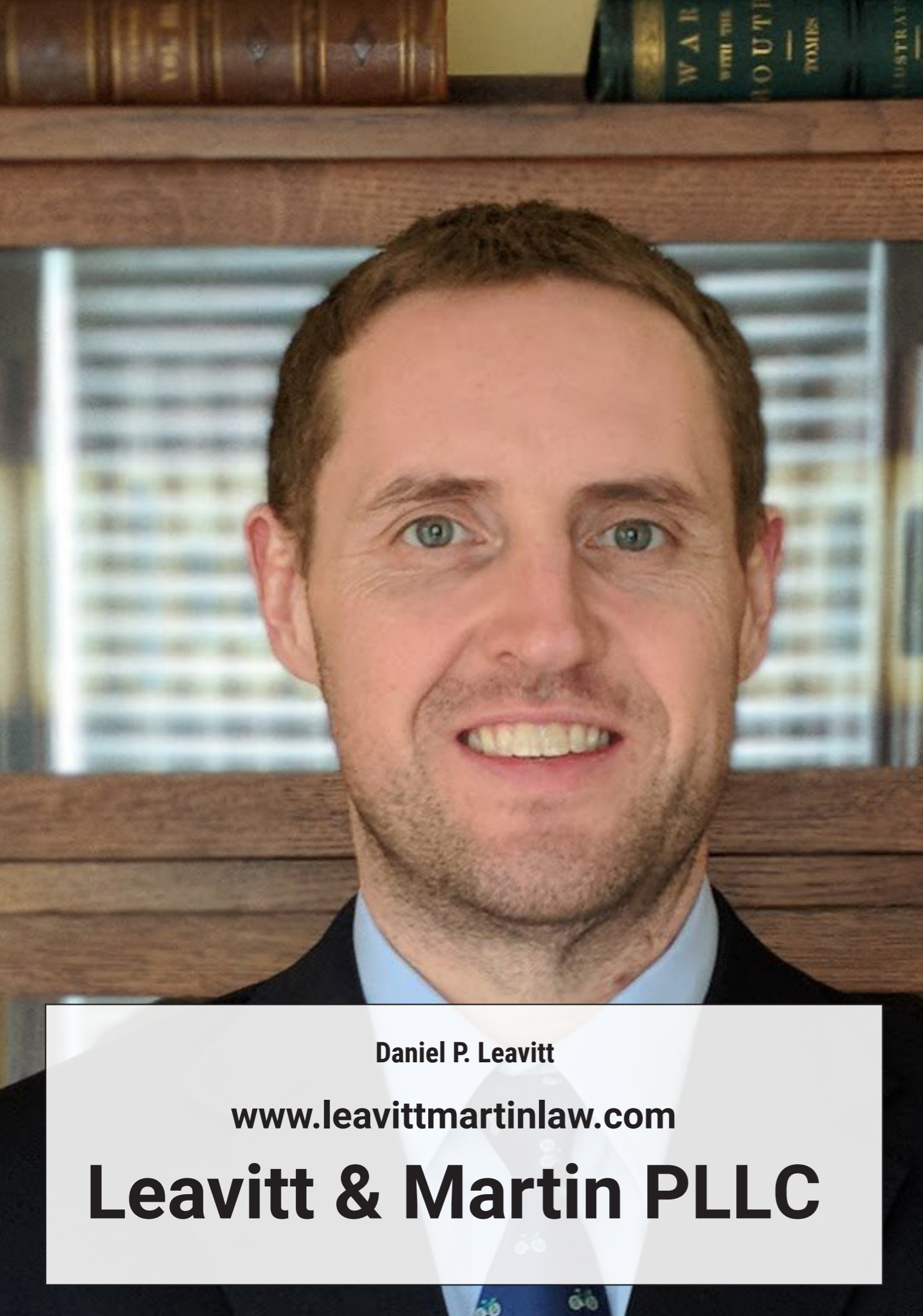
Virginia
UNDERAGE

POSSESSION OF ALCOHOL

College & University
Student Guide

***DON'T LET ONE MISTAKE
DESTROY YOUR FUTURE***

Daniel P Leavitt - Top 100 Trial Attorney



Daniel P. Leavitt

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Leavitt & Martin PLLC

Why I Wrote This Guide

I want to educate college and university students about the unfamiliar process that many young students unfortunately go through. Most college and university students have not had experience facing a criminal charge and do not know what to expect. I want to educate students so they have a better understanding of the criminal process in Virginia for some common charges that arise with college and university students.

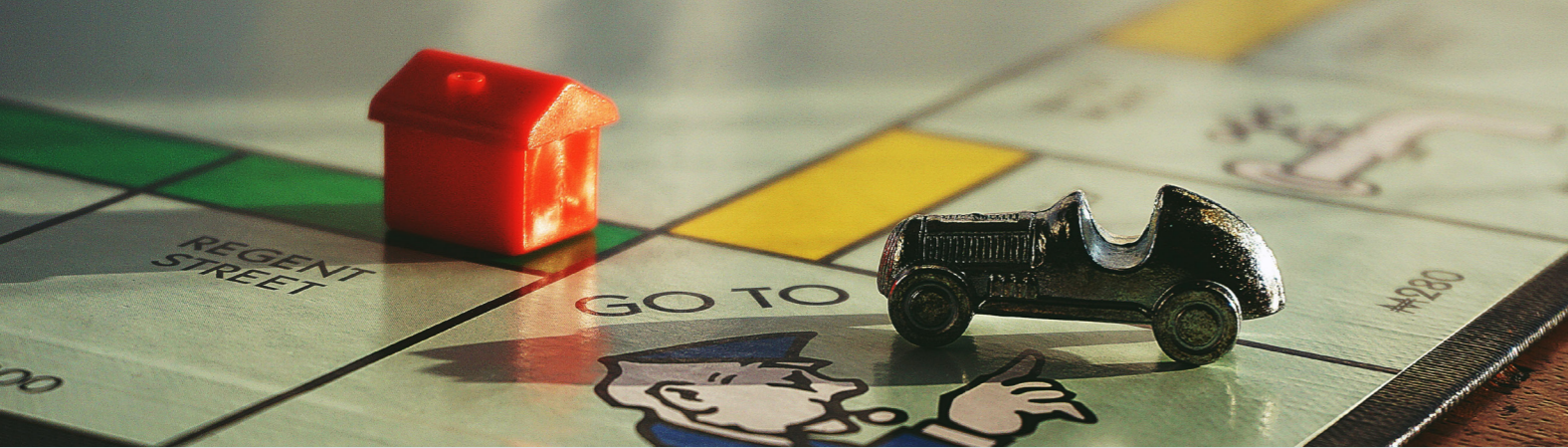
About The Author

Mr. Leavitt graduated from law school in 2009, Magna Cum Laude. Since then, he has been actively engaged in the practice of Virginia criminal law. He has successfully represented thousands of clients in general district court and circuit court combined. His practice has been almost exclusively related to charges like Underage Possession of Alcohol, Possession of Marijuana, and traffic related charges. He is a Member of the National College for DUI Defense, and is listed on National Trial Lawyers, Top 100 Lawyers.

Since opening his practice, Mr. Leavitt has PERSONALLY represented between 3000-5000 clients. In that time span, he has spoken to ten times as many who are experiencing consequences due to misdemeanor criminal charges.

What Is In This Guide

- Whether you need a lawyer
- How the Virginia criminal court system works
- Step by step process, from getting a criminal charge all the way through the trial
- What your lawyer will be doing
- Thorough analysis of underage possession of alcohol law, as well as related alcohol laws
- Legal defenses to underage possession of alcohol
- What will happen if you are found guilty
- Index of the actual law, and related laws relating to common alcohol charges for college students



Overview Of The Virginia Criminal Court System

Every state is different in how they set up their trial courts and appellate courts. In Virginia, there are two trial courts. One is the General District Court and the other trial court is Circuit Court. Every Virginia city and county will have their own general district court and circuit court.

Do I Need A Lawyer?

I am frequently hired by other lawyers in different states, or lawyers who do not practice criminal law. There is a saying that “the person who represents themselves has an idiot for a client.” Attorneys hire other attorneys for themselves and their family for the following reasons:

In criminal cases, almost EVERY prosecutor I know will not talk to someone who does not have a lawyer

This means that you cannot get a plea agreement, and in many cases your best results are from plea agreements

Hiring a quality attorney will assure that you are in the best possible position for when your case comes up, and ***it increases the chances of getting the best outcome possible.***

A quality lawyer will find any possible legal defenses, even ones that are not obvious.

The stakes are too high. A criminal misdemeanor conviction is **permanent and cannot be expunged.**

Jail time, a high fine, and license suspensions are common in criminal cases.

Misdemeanor cases like Underage Possession of Alcohol and Possession of Marijuana will almost always start in general district court. Once the judge in general district court enters a final order the defendant has an automatic right to appeal the case, for any reason, to circuit court. **You lose your right to appeal your case if you do not appeal your case within ten calendar days from the conviction date.**

In circuit court, you get a new judge, or a jury, and it is a trial de novo which means **it is a new trial and they do not look at what happened in lower court.** You are presumed innocent and it is as if the trial in general district court did not happen.

Some of the major differences between general district court and circuit court:

- You don't have a right to trial by jury in general district court
- General district court is not a court of record so they do not record what takes place
- In circuit court you do have a right to a trial by jury
- Circuit court is a court of record and there will be a court reporter there to transcribe what happens or the proceedings will be otherwise recorded

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1 There is a separate Juvenile and Domestic Relations court that operates on the same level and in a similar fashion as the general district court but they specifically hear cases involving juveniles or domestic issues.

2 There is a process where the prosecutors can directly indict someone, and then the misdemeanor would start in circuit court but that is extremely rare.

How Do You Get Charged with Underage Possession of Alcohol?

There are really two ways for the Virginia police to charge you with a misdemeanor.

1. The Police Issue a Summons and You are Released Immediately

This is by far the most common way misdemeanor charges like Underage Possession of Alcohol and other misdemeanors are charged. You sign the summons, which is NOT an admission of guilt, but rather a promise to appear in court.

If the police issue you a summons you are immediately released on your promise to appear in court on a given day and time that will be on your summons. Keep that summons as that is the “charging document” and your attorney will want to review that.

2. The Police Arrest you, Take you Into Custody and Bring you Before a Magistrate and the Magistrate Issues a Misdemeanor Warrant

This process is not as simple as a summons. You will get a ride to the jail where you get fingerprinted and booked. You have to go before a magistrate and the magistrate issue a warrant if they find probable cause. That warrant will be the charging document. It will tell you the law or laws that you are charged with violating.

When a warrant is issued, the magistrate will need to set a bond for you to be released. For misdemeanors such as Underage Possession of Alcohol the magistrate almost always give a bond. If this is your first offense you will likely get a recognizance bond and may not have to even post bond.



I WAS RELEASED ON SUMMONS AND I HAVE A COURT DATE, NOW WHAT?

Many courts will initially set your case for arraignment, or advisement of counsel. If that is the case, then your first court date is not your trial date. That just means that the purpose of the first court date is to tell you about your charge to make sure you understand that it carries the possibility of jail, and they want to ask you what you want to do about your lawyer.

Every court I practice in will give you a reasonable period of time to hire a lawyer for your case. If you hire a lawyer before the arraignment/advisement then they can usually get your case continued to a trial date. The trial date is when your case will be disposed of.



What Happens After the Arraignment / Advisement?

Your case will have a trial date at this point. That trial date is usually about 30-60 days from the arraignment/advisement date.

If you have an attorney, this is where they earn their keep. Your attorney should meet with you as soon as possible to learn about the facts of the case, and any potential witnesses that may need to come to court. If there are witnesses your attorney will subpoena them if they help your case.

Gather Facts:

Your attorney will need to investigate the facts of the case. At this point your attorney will know your version of the events, but your attorney will also want to know what the police officer and any relevant witnesses are saying about the case to get a better understanding. Sometimes the facts are not in dispute, but many times they are. And your attorney will want to learn as much about the case as he/she is able to.

File a Discovery Motion:

Your attorney will file a discovery motion with the court. In general district court Rule 7C:5 requires disclosure of the following information:

(c) Discovery by the Accused. Upon motion of an accused, the court shall order the prosecuting attorney or representative of the Commonwealth to permit the accused to hear, inspect and copy or photograph the following information or material when the existence of such is known or becomes known to the prosecuting attorney or representative of the Commonwealth and such material or information is to be offered in evidence against the accused in a General District Court:

(1) any relevant written or recorded statements or confessions made by the accused, or copies thereof and the substance of any oral statements and confessions made by the accused to any law enforcement officer; and

(2) any criminal record of the accused.

(d) Time of Motion. A motion by the accused under this Rule shall be made in writing and filed with the Court and a copy thereof mailed, faxed, or otherwise delivered to the prosecuting attorney and, if applicable, to the representative of the Commonwealth at least 10 days before the day fixed for trial or preliminary hearing. The motion shall include the specific information or material sought under this Rule.

The Virginia Supreme Court recently altered this rule significantly but it takes effect in July of 2019. The new discovery rules will provide defense attorneys with the ability to get more information than what is currently in the rule.

Meet with the Prosecutor:

Between the arraignment and trial date your attorney will meet with the prosecutor in person or over the phone to discuss your case. After that meeting, your attorney will meet with you to go over your case and discuss the best path forward. By this point you should know whether or not you will have a plea agreement, or whether you are going to plead not guilty and have an actual trial.

In some courts the prosecutor does not get involved, and if that is the case then there will not be a plea agreement in the case.

What Happens at the Trial?

Many Underage Possession of Alcohol charges are resolved by a plea agreement. If there is no legal defense, then trying to negotiate a favorable plea agreement is usually the way to go if your prosecutors are reasonable.

What is a Plea Agreement?

A plea agreement is a negotiated agreement between the prosecutor and you. Your attorney negotiates the terms, but it is binding on you and so you, the defendant, must agree to it. If you don't like it then you do not have to enter into the agreement. If you reject the proposed plea agreement your attorney can try to renegotiate the agreement, but ultimately you may have to decide whether you will enter the plea agreement or take your chances with the judge.

Example: I represented a client charged with distribution of cocaine as a third offense. In Virginia, this carries a mandatory minimum jail sentence of ten years. The prosecutor offered a plea agreement that called for about one third that time. There were no legal defenses, and everything was caught on camera. My client accepted the plea agreement, because his alternative would have been the mandatory ten years in jail since that was the lowest the judge could give for a third offense.

If you have a plea agreement, then the prosecutor and your attorney handle everything with the judge. The agreement is subject to approval from the judge but it is pretty rare for a plea agreement to get rejected.

What Happens if I Don't Have a Plea Agreement?

If you do not have a plea agreement, then you will need to enter a plea of Guilty, Not Guilty, or No Contest. If you have an attorney they will handle this for you.

Guilty: this plea says, "I am guilty, I did it."

Not guilty: this plea says, "I did not commit the crime" OR "you cannot prove that I committed the crime beyond a reasonable doubt." The prosecution must prove their case beyond a reasonable doubt, and if they cannot do that then you are legally not guilty.

No contest: You also hear this referred to its Latin term, nolo contendere. This plea operates exactly the same as a guilty plea. The only difference is that you are not saying, "I am guilty, I did it." You are saying, "I do not contest that if the judge believes the Commonwealth's evidence that there would be sufficient evidence to find me guilty."

If you Plead Not Guilty You will have a Trial in General District Court

If you have an attorney, then they will recommend you plead not guilty if there is a legal defense, or if they don't think the prosecutor can prove their case (missing witness, witness who is recanting, etc).



Trial Procedure in Most General District Courts

Virginia trial procedure in most general district courts goes like this:

1. Judge takes the plea
2. On a not guilty plea, the Commonwealth goes first and presents their case
3. The prosecutor calls their witnesses, one at a time, and the defense can cross examine
4. At the conclusion of the Commonwealth's case the defense may make a motion to dismiss, also known as a motion to strike the Commonwealth's evidence
5. The defense then presents any witnesses, if any
6. After the conclusion of the defenses case, there are closing arguments which are usually pretty brief
7. The judge decides guilt or innocence.
8. If the judge finds evidence sufficient to find you guilty, the judge hears evidence on what he/she should do in the case (eg how you should get sentenced)
9. If the judge found you guilty, your ten day right to appeal begins.

Most trials of this nature are relatively short. Possession cases rarely deal with multiple witnesses and so they usually do not take that long when they are tried.

Ok, I Have a Better Idea of the Procedure, But What is the Law on Underage Possession of Alcohol?

Underage Possession of Alcohol: Virginia Code § 4.1-305.

Virginia Code § 4.1-305 applies to the following people:

- Anyone who is not 21
- Anyone who is interdicted
- Anyone who is intoxicated

Interestingly, this is known as the underage possession of alcohol law but it applies to intoxicated people, whether under 21 or over 21. Interdiction is a process where someone may be declared by a court to be a habitual offender and it actually becomes illegal for them to possess alcohol even when they are of age.

This is the main Virginia law section that deals with underage possession of alcohol.

§ 4.1-305 A. says no person to whom alcohol can be sold under 4.1-304 shall:

- Consume any alcoholic beverage
- Purchase or possess any alcoholic beverage
- Or attempt to consume, purchase or possess any alcoholic beverage

Exceptions:

- Certain business and medical exceptions under 4.1-200 1-7
- Where possession is for work delivery or parental order
- Law enforcement reasons
- In certain situations in a private residence, under parental supervision there is an affirmative defense
- Prosecution is where the possession/consumption occurred OR where there is evidence or physical indicia of possession/consumption

§ 4.1-305 B: You cannot use a fake identification of any kind, or borrow someone else's real identification to purchase or consume, or attempt to purchase or consume an alcoholic beverage.

§ 4.1-305 C: Punishment if Found Guilty

Guilty of a class 1 misdemeanor, so permanent criminal record

- Jail sentence 0-12 months
- Fine: \$500-\$2500
- \$500 is a mandatory minimum fine but the judge can give 50 hours of community service instead of the \$500 fine
- License suspension of 6 months to 1 year
- Eligible for restricted license at the court's discretion
- ASAP (Alcohol Safety Action Program) referral is commonly ordered, but not mandatory

§ 4.1-305 D: Any alcohol seized will be forfeited to the Commonwealth as contraband.

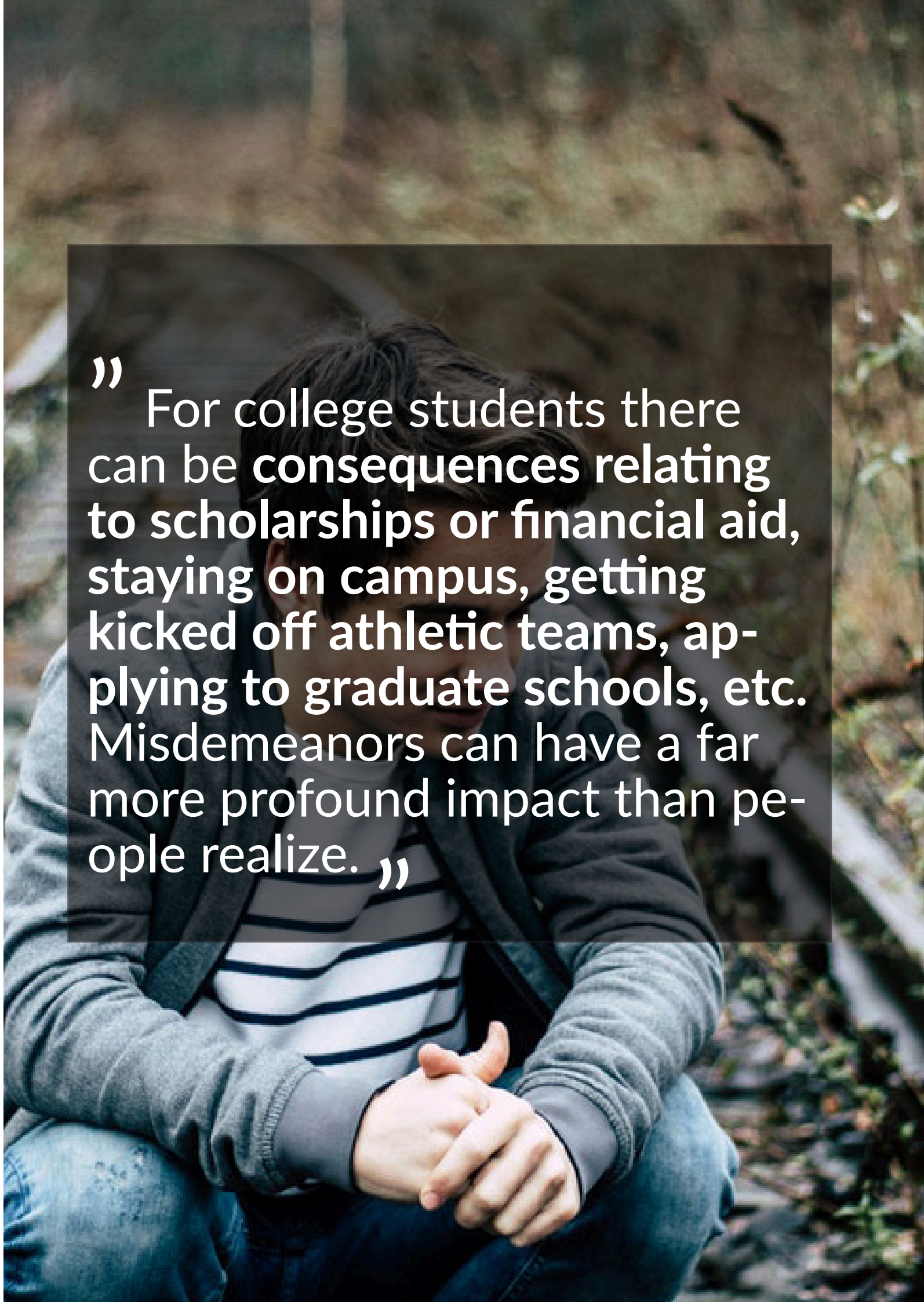
§ 4.1-305 E: Deals with immunity for retail stores for reporting violations.

§ 4.1-305 F: First Offender Program for Underage Possession of Alcohol

This is a discretionary program. The court MAY order it, but does not have to.

The judge may offer the first offender program after any plea, even a not guilty plea or a guilty plea.

- Must be first offense in Virginia and the United States.
- Defendant must agree to the first offender program if offered.
- The case gets continued without a finding of guilt.
- Defendant placed on probation, subject to "appropriate conditions"
- License suspension is common, but not mandatory
- Court MUST require Defendant to get treatment or education
- This is usually VASAP that is ordered to satisfy this



” For college students there can be consequences relating to scholarships or financial aid, staying on campus, getting kicked off athletic teams, applying to graduate schools, etc. Misdemeanors can have a far more profound impact than people realize. ”

- If Defendant violates the terms of first offender, the court will usually convict Defendant and may give some jail time
- If Defendant is successful then the case is dismissed.
- However, it is treated as a conviction if you get a subsequent charge.

Possible Legal Defenses to Underage Possession of Alcohol

Let's assume you are caught drinking in a dorm room. This is a common situation at college. The first two major issues are:

What is the Nature of the Police Interaction?

In other words, how is it that the police are interacting with you? Is it permissible? If you are in a dorm, were the police invited into the dorm or did they walk right in? If they did barge right in, was there anything in plain sight that would give them probable cause to enter your dorm? Was there excessive noise, or the odor of marijuana that might give them probable cause to enter without a warrant?

These are Constitutional law issues. The Virginia Constitution and the United States Constitution protect your rights.

2. Assuming the Police were in a Permissible Place to Interact with You, are there any other Constitutional Issues?

In an underage possession of alcohol case, the major issue is statements made by the defendant. Miranda requires that the officers read you Miranda rights when you are in a custodial interrogation. So Miranda does not apply if the police are having a voluntary interaction with somebody. Miranda only deals with statements, and it only applies where there is a custodial interrogation.

However, if the police place you in handcuffs for an extended period of time and you are not free to leave then it is possible they have violated your Miranda rights and your statements may not be admissible in court.

This is important because often the defendant's admission is one of the biggest pieces of evidence the Commonwealth has.

Even if there are No Constitutional Law Issues you May be able to Get Creative

One of the first cases I tried for Underage Alcohol Possession involved some kids who were fishing and drinking beers. The fish and game officer saw them drinking and charged them with Underage Possession of Alcohol. However, he did not take possession of any of their alcohol. He just took a picture of the Budweiser cans for his evidence.

When you read the statute it prohibits consuming or possessing an "Alcoholic Beverage." That is a term that carries legal significance. To violate the underage possession of alcohol law, the Commonwealth must prove beyond a reasonable doubt that the defendant consumed or possessed an "alcoholic beverage."

Stores sell non alcoholic beverages that still contain some level of alcohol. So I did the research and 4.1-100 defines an "alcoholic beverage" as anything with at least .05% abv. So not all drinks containing alcohol are an "alcoholic beverage" that would trigger a violation.

So that lead me to question how they could prove the alcohol by volume percent. Virginia law 4.1-353 states that in a prosecution the Commonwealth can enter into evidence a sealed container where the label states the alcohol content.

Fortunately for my client, the fish and game officer just had pictures and the pictures

Other than First Offender, or Winning a Trial, What Else can you do?

Some prosecutors will agree to dismiss the case without making you do the first offender program. In some courts where I practice, I can frequently convince the prosecutor to continue the case for a short time. My client will do some community service hours and maybe take some alcohol education classes. It just depends on the prosecutor. But if they do all of that then the prosecutor will just dismiss the case.

So there are still ways to get the case dismissed potentially even without a winning legal defense without going through the first offender program.

Indirect Consequences of Underage Possession of Alcohol

We frequently take phone calls from people who want to expunge an old conviction for a misdemeanor in Virginia. Once you are found guilty, you cannot expunge a criminal charge. So I usually have to tell people I cannot help.

Usually when people call, they are experiencing an employment related consequence. The misdemeanor conviction is a permanent criminal record, and if you don't get it dismissed it will show up on background checks for the rest of your life.

In today's economy it is important to try to maintain the best record you can have. If a company has to choose between two people and one has a criminal record it is obvious who they will likely choose.

We can usually figure out a way to get these charges completely dismissed. And we can often do it in a way that does not result in a license suspension, and is not pursuant to the first offender program. What that means is that you don't have a criminal record. **As a college student, you do not want to start your career with a criminal record just for one small mistake. Don't let a small mistake have a permanent impact on you.**



What Will
Happen If I
Am Found
Guilty?

If you are convicted of underage possession of alcohol you will have a permanent criminal record that never goes away and can never be expunged. In addition, the judge by law will suspend your license for at least 6 months, but not more than 1 year. You will get a mandatory minimum fine of \$500 but it could be as high as \$2500. The judge will also usually order VASAP classes as part of the probation.

Frequently the judge will give jail time. They can suspend all of the jail sentence if they choose to do that. That means that you are on probation, and you cannot get in any trouble (usually 3 years) and if you do then you face the possibility of having to serve the suspended jail sentence.

These are the direct consequences of a conviction. Frequently there are other consequences in addition to the direct consequences. For instance, a **misdemeanor conviction can impact your ability to keep and maintain a security clearance**. Many jobs require a clearance or a background check and the misdemeanor will show up.

The misdemeanor can have immigration consequences and it can impact your ability to obtain a visa, Green Card, or citizenship. There are cases where you can be deported due to the misdemeanor.

Misdemeanors frequently impact your ability to get jobs, or to keep your current job, or to advance in your job. I frequently take phone calls from people, even ten years after a conviction, who are experiencing an employment consequence and I cannot help because the conviction is permanent unless you successfully appeal.

Finally, for college students there can be consequences relating to scholarships or financial aid, staying on campus, getting kicked off athletic teams, applying to graduate schools, etc. Misdemeanors can have a far more profound impact than people realize.

**LET US FIGHT FOR
YOUR FUTURE...**

**YOU HAVE TOO
MUCH TO LOSE!**



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Other Alcohol Charges

§ 18.2-388. Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center.

If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor.

You can be found guilty of this even on private property. Courts have held that “public” means in open view, visible to the community and can include private property. However, if the private property is shielded from public view then the arrest is not supported.

It is a class 4 criminal misdemeanor upon conviction. Virginia class 4 misdemeanors there is no possibility of jail, just a fine of \$250. However, because public intoxication is a criminal misdemeanor you will have a permanent criminal record if you are convicted.

4.1-308 Drinking in Public

§ 4.1-308. Drinking alcoholic beverages, or offering to another, in public place; penalty; exceptions.

It is a class 4 misdemeanor, punishable by a fine of up to \$250 (and a permanent criminal record if convicted) to drink in public.

Buying Alcohol for Someone Not Authorized by Law: § 4.1-306. Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture.

If you purchase alcohol for someone who is not 21 years old, or who is intoxicated or interdicted then you are committing a class 1 criminal misdemeanor, punishable by 0-12 months in jail and a fine of \$0-2500. In addition, you may have your license suspended for up to one year if convicted and you will have a permanent criminal record if convicted.

§ 4.1-309. Drinking or possessing alcoholic beverages in or on public school grounds; penalty.

It is a class 2 misdemeanor to possess or consume alcohol on public school grounds. This charge carries up to six months in jail, and a fine up to \$1000. In addition it leaves you with a permanent criminal record if you are convicted.

Relevant Laws

Underage Possession of Alcohol 4.1-305

§ 4.1-305. Purchasing or possessing alcoholic beverages unlawful in certain cases; venue; exceptions; penalty; forfeiture; deferred proceedings; treatment and education programs and services.

A. No person to whom an alcoholic beverage may not lawfully be sold under § 4.1-304 shall consume, purchase or possess, or attempt to consume, purchase or possess, any alcoholic beverage, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer or his agent when possession of an alcoholic beverage is necessary in the performance of his duties. Such person may be prosecuted either in the county or city in which the alcohol was possessed or consumed, or in the county or city in which the person exhibits evidence of physical indicia of consumption of alcohol. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows that such consumption or possession was pursuant to subdivision 7 of § 4.1-200.

B. No person under the age of 21 years shall use or attempt to use any (i) altered, fictitious, facsimile or simulated license to operate a motor vehicle, (ii) altered, fictitious, facsimile or simulated document, including, but not limited to a birth certificate or student identification card, or (iii) motor vehicle operator's license, birth certificate or student identification card of another person in order to establish a false identification or false age for himself to consume, purchase or attempt to consume or purchase an alcoholic beverage.

C. Any person found guilty of a violation of this section shall be guilty of a Class 1 misdemeanor; and upon conviction, (i) such person shall be ordered to pay a mandatory minimum fine of \$500 or ordered to perform a mandatory minimum of 50 hours of community service as a condition of probation supervision and (ii) the license to operate a motor vehicle in the Commonwealth of any such person age 18 or older shall be suspended for a period of not less than six months and not more than one year; the license to operate a motor vehicle in the Commonwealth of any juvenile shall be handled in accordance with the provisions of § 16.1-278.9. The court, in its discretion and upon a demonstration of hardship, may authorize an adult convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection E of § 18.2-271.1 or when referred to a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1. During the period of license suspension, the court may require an adult who is issued a restricted permit under the provisions of this subsection to be (a) monitored by an alcohol safety action program, or (b) supervised by a local community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. The alcohol safety action program or local community-based probation services agency shall report to the court any violation of the terms of the restricted permit, the required alcohol safety action program monitoring or local community-based probation services and any condition related thereto or any failure to remain alcohol-free during the suspension period.

D. Any alcoholic beverage purchased or possessed in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

E. Any retail licensee who in good faith promptly notifies the Board or any state or local law-enforcement agency of a violation or suspected violation of this section shall be accorded immunity from an administrative penalty for a violation of § 4.1-304.

F. When any adult who has not previously been convicted of underaged consumption, purchase or possession of alcoholic beverages in Virginia or any other state or the United States is before the court, the court may, upon entry of a plea of guilty or not guilty, if the facts found by the court would justify a finding of guilt of a violation of subsection A, without entering a judgment of guilt and with the consent of the accused, defer further proceedings and place him on probation subject to appropriate conditions. Such conditions may include the imposition of the license suspension and restricted license provisions in subsection C. However, in all such deferred proceedings, the court shall require the accused to enter a treatment or education program or both, if available, that in the opinion of the court best suits the needs of the accused. If the accused is placed on local community-based probation, the program or services shall be located in any of the judicial districts served by the local community-based probation services agency or in any judicial district ordered by the court when the placement is with an alcohol safety action program. The services shall be provided by (i) a program licensed by the Department of Behavioral Health and Developmental Services, (ii) certified by the Commission on VASAP, or (iii) by a program or services made available through a community-based probation services agency established pursuant to Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1, if one has been established for the locality. When an offender is ordered to a local community-based probation services rather than the alcohol safety action program, the local community-based probation services agency shall be responsible for providing for services or referring the offender to education or treatment services as a condition of probation.

Upon violation of a condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the conditions, the court shall discharge the person and dismiss the proceedings against him without an adjudication of guilt. A discharge and dismissal hereunder shall be treated as a conviction for the purpose of applying this section in any subsequent proceedings.

When any juvenile is found to have committed a violation of subsection A, the disposition of the case shall be handled according to the provisions of Article 9 (§ 16.1-278 et seq.) of Chapter 11 of Title 16.1.

Code 1950, § 4-62; 1970, c. 686; 1974, c. 460; 1979, c. 537; 1981, c. 24; 1982, c. 66; 1983, c. 608; 1985, c. 559; 1990, c. 771; 1993, c. 866; 1995, c. 374; 1996, cc. 626, 730; 2000, c. 325; 2002, c. 338; 2003, cc. 845, 849; 2004, cc. 322, 461; 2005, c. 895; 2006, c. 207; 2007, c. 133; 2009, cc. 248, 726, 813, 840; 2012, cc. 250, 260.

§ 4.1-304. Persons to whom alcoholic beverages may not be sold; proof of legal age; penalty.

A. No person shall, except pursuant to subdivisions 1 through 5 of § 4.1-200, sell any alcoholic beverages to any individual when at the time of such sale he knows or has reason to believe that the individual to whom the sale is made is (i) less than 21 years of age, (ii) interdicted, or (iii) intoxicated. Any person convicted of a violation of this subsection is guilty of a Class 1 misdemeanor.

Exceptions to Underage Possession of Alcohol:

§ 4.1-200. Exemptions from licensure.

The licensure requirements of this chapter shall not apply to:

1. A person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, who administers or causes to be administered alcoholic beverages to any bona fide patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for emergency medicinal purposes. Such person may charge for the alcoholic beverages so administered, and carry such stock as may be necessary for this purpose. No charge shall be made of any patient for the alcoholic beverages so administered to him where the same have been supplied to the institution by the Board free of charge.

2. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicine containing sufficient medication to prevent it from being used as a beverage.

3. The manufacture, sale and delivery or shipment by persons authorized under existing laws to engage in such business of any medicinal preparations manufactured in accordance with formulas prescribed by the United States pharmacopoeia; national formulary, patent and proprietary preparations; and other bona fide medicinal and technical preparations; which contain no more alcohol than is necessary to extract the medicinal properties of the drugs contained in such preparations, and no more alcohol than is necessary to hold the medicinal agents in solution and to preserve the same, and which are manufactured and sold to be used exclusively as medicine and not as beverages.

4. The manufacture, sale and delivery or shipment of toilet, medicinal and antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages.

5. The manufacture and sale of food products known as flavoring extracts which are manufactured and sold for cooking and culinary purposes only and not sold as beverages.

6. Any person who manufactures at his residence or at a gourmet brewing shop for domestic consumption at his residence, but not to be sold, dispensed or given away, except as hereinafter provided, wine or beer or both, in an amount not to exceed the limits permitted by federal law.

Any person who manufactures wine or beer in accordance with this subdivision may remove from his residence an amount not to exceed fifty liters of such wine or fifteen gallons of such beer on any one occasion for (i) personal or family use, provided such use does not violate the provisions of this title or Board regulations; (ii) giving to any person to whom wine or beer may be lawfully sold an amount not to exceed (a) one liter of wine per person per year or (b) seventy-two ounces of beer per person per year, provided such gift is for noncommercial purposes; or (iii) giving to any person to whom beer may lawfully be sold a sample of such wine or beer, not to exceed (a) one ounce of wine by volume or (b) two ounces of beer by volume for on-premises consumption at events organized for judging or exhibiting such wine or beer, including events held on the premises of a retail licensee. Nothing in this paragraph shall be construed to authorize the sale of such wine or beer.

The provision of this subdivision shall not apply to any person who resides on property on which a winery, farm winery, or brewery is located.

7. Any person who keeps and possesses lawfully acquired alcoholic beverages in his residence for his personal use or that of his family. However, such alcoholic beverages may be served or given to guests in such residence by such person, his family or servants when (i) such guests are 21 years of age or older or are accompanied by a parent, guardian, or spouse who is 21 years of age or older, (ii) the consumption or possession of such alcoholic beverages by family members or such guests occurs only in such residence where the alcoholic beverages are allowed to be served or given pursuant to this subdivision, and (iii) such service or gift is in no way a shift or device to evade the provisions of this title. The provisions of this subdivision shall not apply when a person serves or provides alcoholic beverages to a guest occupying the residence as the lessee of a short-term rental, as that term is defined in § 15.2-983, regardless of whether the person who permanently resides in the residence is present during the short-term rental.

Definition of Alcoholic Beverage

§ 4.1-100. Definitions.

As used in this title unless the context requires a different meaning:

„Alcohol” means the product known as ethyl or grain alcohol obtained by distillation of any fermented liquor, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with formulas approved by the government of the United States.

„Alcohol vaporizing device” means any device, machine, or process that mixes any alcoholic beverages with pure oxygen or other gas to produce a vaporized product for the purpose of consumption by inhalation.

„Alcoholic beverages” includes alcohol, spirits, wine, and beer, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic beverages, and every liquid or solid, powder or crystal, patented or not, containing alcohol, spirits, wine, or beer and capable of being consumed by a human being. Any liquid or solid containing more than one of the four varieties shall be considered as belonging to that variety which has the higher percentage of alcohol, however obtained, according to the order in which they are set forth in this definition; except that beer may be manufactured to include flavoring materials and other nonbeverage ingredients containing alcohol, as long as no more than 49 percent of the overall alcohol content of the finished product is derived from the addition of flavors and other nonbeverage ingredients containing alcohol for products with an alcohol content of no more than six percent by volume; or, in the case of products with an alcohol content of more than six percent by volume, as long as no more than one and one-half percent of the volume of the finished product consists of alcohol derived from added flavors and other nonbeverage ingredients containing alcohol.

§ 4.1-308. Drinking alcoholic beverages, or offering to another, in public place; penalty; exceptions.

A. If any person takes a drink of alcoholic beverages or offers a drink thereof to another, whether accepted or not, at or in any public place, he is guilty of a Class 4 misdemeanor.

B. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any rooms or areas approved by the Board in a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein.

C. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any room or area approved by the Board at an event for which a banquet license or mixed beverage special events license has been granted. Nor shall this section prevent, upon authorization of the licensee, any person from drinking his own lawfully acquired alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been granted.

D. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another on a chartered boat being used for the transportation of passengers for compensation which is not licensed by the Board and which does not sell alcoholic beverages.

E. This section shall not prevent any person from drinking alcoholic beverages or offering a drink thereof to another in any areas approved by the Board in a licensed commercial lifestyle center.

Code 1950, § 4-78; 1956, c. 23; 1972, c. 143; 1977, c. 439; 1979, c. 622; 1986, c. 113; 1988, c. 893; 1989, c. 42; 1990, c. 932; 1993, c. 866; 2017, cc. 157, 492.

§ 4.1-306. Purchasing alcoholic beverages for one to whom they may not be sold; penalty; forfeiture.

A. Any person who purchases alcoholic beverages for another person, and at the time of such purchase knows or has reason to believe that the person for whom the alcoholic beverage was purchased was (i) interdicted, or (ii) intoxicated, is guilty of a Class 1 misdemeanor.

A1. Any person who purchases for, or otherwise gives, provides, or assists in the provision of alcoholic beverages to another person, when he knows or has reason to know that such person was less than 21 years of age, except (i) pursuant to subdivisions 1 through 7 of § 4.1-200; (ii) where possession of the alcoholic beverages by a person less than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent; or (iii) by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties, is guilty of a Class 1 misdemeanor.

B. In addition to any other penalty authorized by law, any person found guilty of a violation of this section shall have his license to operate a motor vehicle suspended for a period of not more than one year. The court, in its discretion, may authorize any person convicted of a violation of this section the use of a restricted permit to operate a motor vehicle in accordance with the provisions of subsection D of § 16.1-278.9 or subsection E of § 18.2-271.1.

C. Any alcoholic beverages purchased in violation of this section shall be deemed contraband and forfeited to the Commonwealth in accordance with § 4.1-338.

Code 1950, § 4-73; 1970, c. 686; 1993, c. 866; 2005, cc. 895, 898; 2006, c. 87; 2011, c. 31.

§ 4.1-309. Drinking or possessing alcoholic beverages in or on public school grounds; penalty.

A. No person shall possess or drink any alcoholic beverage in or upon the grounds of any public elementary or secondary school during school hours or school or student activities.

B. In addition, no person shall drink and no organization shall serve any alcoholic beverage in or upon the grounds of any public elementary or secondary school after school hours or school or student activities, except for religious congregations using wine for sacramental purposes only.

C. Any person convicted of a violation of this section shall be guilty of a Class 2 misdemeanor.

D. This section shall not prohibit any person from possessing or drinking alcoholic beverages or any organization from serving alcoholic beverages in areas approved by the Board at a performing arts center owned by the City of Alexandria or the City of Portsmouth, provided the organization operating the performing arts center or its lessee has a license granted by the Board.

1954, c. 651, § 4-78.1; 1982, c. 288; 1991, c. 710; 1993, c. 866; 1994, c. 844; 1997, cc. 784, 837; 2007, c. 813.