

## **123.46 Consumption or intoxication in public places notifications chemical tests exoneration.**

1. As used in this section unless the context otherwise requires:

*a. "Arrest"* means the same as defined in section 804.5 and includes taking into custody pursuant to section 232.19.

*b. "Chemical test"* means a test of a person's blood, breath, or urine to determine the percentage of alcohol present by a qualified person using devices and methods approved by the commissioner of public safety.

*c. "Peace officer"* means the same as defined in section 801.4.

*d. "School"* means a public or private school or that portion of a public or private school which provides teaching for any grade from kindergarten through grade twelve.

2. A person shall not use or consume alcoholic liquor, wine, or beer upon the public streets or highways. A person shall not use or consume alcoholic liquor in any public place except premises covered by a liquor control license. A person shall not possess or consume alcoholic liquors, wine, or beer on public school property or while attending a public or private school-related function. A person shall not be intoxicated or simulate intoxication in a public place. A person violating this subsection is guilty of a simple misdemeanor.

3. When a peace officer arrests a person on a charge of public intoxication under this section, the peace officer shall inform the person that the person may have a chemical test administered at the person's own expense. If a device approved by the commissioner of public safety for testing a sample of a person's breath to determine the person's blood alcohol concentration is available, that is the only test that need be offered the person arrested. In a prosecution for public intoxication, evidence of the results of a chemical test performed under this subsection is admissible upon proof of a proper foundation. The percentage of alcohol present in a person's blood, breath, or urine established by the results of a chemical test performed within two hours after the person's arrest on a charge of public intoxication is presumed to be the percentage of alcohol present at the time of arrest.

4. *a.* A peace officer shall make a reasonable effort to identify a person under the age of eighteen who violates this section and, if the person is not referred to juvenile court, the law enforcement agency of which the peace officer is an employee shall make a reasonable attempt to notify the person's custodial parent or legal guardian of the violation, whether or not the person is taken into custody, unless the officer has reasonable grounds to believe that notification is not in the best interests of the person or will endanger that person.

*b.* The peace officer shall also make a reasonable effort to identify the elementary or secondary school which the person attends if the person is enrolled in elementary or secondary school and to notify the superintendent or the superintendent's designee of the school which the person attends, or the authorities in charge of the nonpublic school which the person attends, of the violation. If the person is taken into custody, the peace officer shall notify a juvenile court officer who shall make a reasonable effort to identify the elementary or secondary school the person attends, if any, and to notify the superintendent of the school district or the superintendent's designee, or the authorities in charge of the nonpublic school, of the violation. A reasonable attempt to notify the person includes, but is not limited to, a telephone call or notice by first-class mail.

5. Upon the expiration of two years following conviction for a violation of this section, a person may petition the court to exonerate the person of the conviction, and if the person has had no other criminal convictions, other than simple misdemeanor violations of chapter 321 during the two-year period, the person shall be deemed exonerated of the offense as a matter of law. The court shall enter an order exonerating the person of the conviction, and ordering that the record of the conviction be expunged by the clerk of the district court.

[C35, § 1921-f42, 1921-f127; C39, § **1921.042, 1921.132**; C46, 50, 54, 58, 62, 66, 71, § 123.42, 124.37; C73, 75, 77, 79, 81, § 123.46]

85 Acts, ch 32, § 36; 86 Acts, ch 1067, § 1; 89 Acts, ch 225, § 10; 92 Acts, ch 1231, § 7; 2000 Acts, ch 1138, §1