

123.46 Consumption or intoxication in public places — notifications — chemical tests — expungement.

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](#).

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 in a public place. A person violating [this subsection](#) is guilty of a simple misdemeanor.

3. A person shall not simulate intoxication in a public place. A person violating [this subsection](#) is guilty of a simple misdemeanor.

4. 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.

5. a. A peace officer shall make a reasonable effort to identify a person under the age of eighteen who violates [this section](#) and refer the person to juvenile court.

b. A juvenile court officer shall notify the person’s custodial parent, legal guardian, or custodian of the violation. In addition, the juvenile court officer 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.

6. Upon the expiration of two years following conviction for a violation of [this section](#) and a violation of a local ordinance that arose from the same transaction or occurrence, a person may petition the court to expunge the conviction including the conviction for a violation of a local ordinance that arose from the same transaction or occurrence, and if the person has had no other criminal convictions, other than local traffic violations or simple misdemeanor violations of [chapter 321](#) during the two-year period, the conviction and the conviction for a violation of a local ordinance that arose from the same transaction or occurrence shall be expunged as a matter of law. The court shall enter an order that the record of the conviction and the conviction for a violation of a local ordinance that arose from the same transaction or occurrence be expunged by the clerk of the district court. Notwithstanding [section 692.2](#), after receipt of notice from the clerk of the district court that a record of conviction and the conviction for a violation of a local ordinance that arose from the same transaction or occurrence has been expunged, the record of conviction and the conviction for a violation of a local ordinance that arose from the same transaction or occurrence shall be removed from

the criminal history data files maintained by the department of public safety if such a record was maintained in the criminal history data files.

[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; 2010 Acts, ch 1044, §1, 2; 2010 Acts, ch 1071, §1; 2010 Acts, ch 1128, §1; 2011 Acts, ch 17, §10; 2016 Acts, ch 1058, §1

Referred to in §125.34, §232.22, §232.52

Subsection 6 amended