

§ 65-c. Unlawful possession of an alcoholic beverage with the intent to consume by persons under the age of twenty-one years. 1. Except as hereinafter provided, no person under the age of twenty-one years shall possess any alcoholic beverage, as defined in this chapter, with the intent to consume such beverage.

2. A person under the age of twenty-one years may possess any alcoholic beverage with intent to consume if the alcoholic beverage is given:

(a) to a person who is a student in a curriculum licensed or registered by the state education department and the student is required to taste or imbibe alcoholic beverages in courses which are a part of the required curriculum, provided such alcoholic beverages are used only for instructional purposes during class conducted pursuant to such curriculum; or

(b) to the person under twenty-one years of age by that person's parent or guardian.

3. Any person who unlawfully possesses an alcoholic beverage with intent to consume may be summoned before and examined by a court having jurisdiction of that charge; provided, however, that nothing contained herein shall authorize, or be construed to authorize, a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or a police officer as defined in subdivision thirty-four of section 1.20 of such law to arrest a person who unlawfully possesses an alcoholic beverage with intent to consume. If a determination is made sustaining such charge the court may impose a fine not exceeding fifty dollars and/or completion of an alcohol awareness program established pursuant to section 19.25 of the mental hygiene law and/or an appropriate amount of community service not to exceed thirty hours.

4. No such determination shall operate as a disqualification of any such person subsequently to hold public office, public employment, or as a forfeiture of any right or privilege or to receive any license granted by public authority; and no such person shall be denominated a criminal by reason of such determination, nor shall such determination be deemed a conviction.

5. Whenever a peace officer as defined in subdivision thirty-three of section 1.20 of the criminal procedure law or police officer as defined in subdivision thirty-four of section 1.20 of the criminal procedure law shall observe a person under twenty-one years of age openly in possession of an alcoholic beverage as defined in this chapter, with the intent to consume such beverage in violation of this section, said officer may seize the beverage, and shall deliver it to the custody of his or her department.

6. Any alcoholic beverage seized in violation of this section is hereby declared a nuisance. The official to whom the beverage has been delivered shall, no earlier than three days following the return date for initial appearance on the summons, dispose of or destroy the alcoholic beverage seized or cause it to be disposed of or destroyed. Any person claiming ownership of an alcoholic beverage seized under this section may, on the initial return date of the summons or earlier on five days notice to the official or department in possession of the beverage, apply to the court for an order preventing the destruction or disposal of the alcoholic beverage seized and ordering the return of that beverage. The court may order the beverage returned if it is determined that return of the beverage would be in the interest of justice or that the beverage was improperly seized.