

**2021 HOUSE JUDICIARY**

**HB 1184**

# 2021 HOUSE STANDING COMMITTEE MINUTES

**Judiciary**  
Room JW327B, State Capitol

HB 1184  
1/25/2021

Relating to prohibitions for an individual under twenty-one years of age; and to provide a penalty.

**Chairman Klemin** called the hearing to order at 9:30 AM.

Present: Representatives Klemin, Karls, Becker, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Satrom, and Vetter. Absent: Buffalo and Roers Jones.

**Discussion Topics:**

- Drinking age
- Underage drinking
- Restaurant bar areas

**Rep. Louser:** introduced the bill, no written testimony

**Laura Anderson, Assistant Director of Human Services Behavioral Health Division:**  
Testimony # 2565 9:40

**Rep Magrum** moved a Do Pass

**Rep. Vetter.** second

Roll call vote:

<b>Representatives</b>	<b>Vote</b>
Chairman Klemin	Y
Vice Chairman Karls	N
Rep Becker	Y
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	Y
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	AB
Rep B. Satrom	Y
Rep Vetter	Y
Rep Buffalo	AB
Rep K. Hanson	Y

Motion carried. 11-1-2 Rep Vetter is the carrier.

**Chairman Klemin** Closed 9:50

DeLores D. Shimek  
Committee Clerk by Anna Fiest

**REPORT OF STANDING COMMITTEE**

**HB 1184: Judiciary Committee (Rep. Klemin, Chairman)** recommends **DO PASS** (11 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1184 was placed on the Eleventh order on the calendar.

**Testimony**  
**House Bill 1184 - Department of Human Services**  
**House Judiciary Committee**  
**Representative Klemin, Chairman**

January 25, 2021

Chairman Klemin and members of the House Judiciary Committee, I am Laura Anderson, assistant director, with the Department of Human Services' Behavioral Health Division (Department). I appear today to provide testimony in opposition of House Bill 1184.

Alcohol is the most used substance among youth in North Dakota. More than one in four (27.6%) North Dakota high school students report current alcohol use (use within the past 30 days) and 12.9 percent report their first use of alcohol before the age of 13 (North Dakota Youth Risk Behavior Survey, 2019).

Research shows that people who start drinking before the age of 15 are at a higher risk for developing alcohol use disorder later in life. For example, adults ages 26 and older who began drinking before age 15 are five times more likely to report having alcohol use disorder in the past year as those who waited until age 21 or later to begin drinking.

Since 2014 there has been a large coordinated effort to improve the state's behavioral health system. The state struggles to meet current need for individuals with substance use disorders as evidenced by the overwhelming use of the substance use disorder voucher. By implementing effective public policy and prevention strategies we can decrease the need for these costly services later in life. And, there is great support for prevention efforts in North Dakota as evidence by the most recent North Dakota Community Readiness Survey which identified that 91.5 percent believe preventing alcohol and drug use among youth is important.

There are many risk factors that influence a person's likelihood of engaging in illegal or risky substance use. Adolescent alcohol use and heavy drinking have been proven to be related to characteristics of the local alcohol environment, including alcohol control policies, enforcement, adult drinking and bar density. The Behavioral Health Division continues to partner with Local Public Health and Tribes throughout the state to implement evidence-based substance abuse prevention strategies, primarily with the aim to reduce underage drinking, adult binge drinking and related consequences.

House Bill 1184 has the potential to counter these prevention efforts being implemented by communities throughout the state.

This concludes my testimony, and I am happy to answer any questions.



U.S. Department of Justice  
Office of Justice Programs  
*Office of Juvenile Justice and Delinquency Prevention*

# Regulatory Strategies for Preventing Youth Access to Alcohol: BEST PRACTICES

Prepared by

**Pacific Institute**  
FOR RESEARCH AND EVALUATION

In support of the

**OJJDP Enforcing Underage  
Drinking Laws Program**



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# About This Guide

People who care about young people are aware of the serious problems caused by underage alcohol use. They should also be aware that there are many effective strategies for reducing underage drinking. Every State and community should be using these strategies.

State and local laws and regulations have the potential to be particularly effective in reducing underage access to alcohol. The right laws and regulations can minimize opportunities for young people to use alcohol and maximize the opportunities for effective enforcement and prevention.

This document provides guidance on the best practices for shaping and implementing laws and regulations to

- Restrict the *commercial availability* of alcohol to youth, with a focus on the practices of alcohol retailers;
- Restrict *social availability* to youth, with a focus on noncommercial sources of alcohol and noncommercial venues where young people consume alcohol; and
- Restrict *youth possession* to deter young people from attempting to purchase or consume alcohol. State and local policymakers and concerned citizens can use the guide to
- Assess the existing laws and regulations in their jurisdiction;
- Identify gaps, loopholes, and areas for improvement;
- Identify strengths upon which effective enforcement strategies can be built;
- Persuade legislatures and local policymaking bodies that changes are needed; and
- Motivate enforcement and regulatory agencies to strengthen enforcement of existing laws and policies.

Well-crafted laws and regulations form the basis of effective strategies to reduce underage alcohol use. This guide can help States and localities to build a strong base for action.





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# Overview

State and local regulations—laws, ordinances, policies—form the framework of any effort to reduce underage drinking. The right regulations, well crafted, can minimize the opportunities for young people to use alcohol and maximize opportunities for effective and efficient enforcement. The absence of an important regulation, or loopholes in the regulation, can put youth in harm’s way and frustrate enforcement efforts.

This guide provides information on the regulations that are most important in reducing youth access to alcohol and underage drinking. It spells out the best practices for establishing appropriate laws and regulations and suggests priorities for regulatory and enforcement efforts. It also discusses some of the implementation issues that will be crucial for the successful adoption and implementation of these regulatory strategies.

The guide divides regulations into the following three categories, depending on which aspect of youth access or use they address:

1. ***Commercial availability***, which focuses on the practices of alcohol retailers such as liquor or grocery stores and bars;
2. ***Social/public availability***, which focuses on noncommercial sources of alcohol (such as older friends) and noncommercial venues where young people consume alcohol (such as parties); and
3. ***Youth possession***, which focuses on deterring young people from attempting to purchase or consume alcohol.

For each type of regulation, the guide discusses

- The available research literature on effectiveness;
- Features of good laws;
- Pitfalls to avoid; and
- Examples of States or communities that have used the regulation successfully.

## Best Practices

Each section of the guide includes “best practice” recommendations. By scanning the best practices, a State or community can identify gaps and areas for improvement, as well as strengths upon which effective enforcement campaigns can be built.

Following are the best practices for each regulatory category.

### Commercial Availability

#### **BEST PRACTICE #1: Ban commercial sales and gifts to minors.**

Prohibit all commercial sales, gifts, or other methods of furnishing alcohol to minors without exception, and provide vendors an affirmative defense regarding apparently valid, but false, identification.

#### **BEST PRACTICE #2: Restrict the location of alcohol outlets.**

Limit the number of outlets that can be licensed within a given area; that is, limit outlet density.

#### **BEST PRACTICE #3: Restrict alcohol sales at community events.**

Strictly limit alcohol sales and alcohol industry sponsorships at youth- and family-oriented community events; impose strict conditions designed to reduce youth access at special events where alcohol is sold.

#### **BEST PRACTICE #4: Restrict the age of alcohol servers and sellers.**

Require that all retail alcohol outlet employees who are engaged in the sale or service of alcohol be at least 21 years of age.

#### **BEST PRACTICE #5: Restrict minors’ access to bars and nightclubs.**

Prohibit minors from entering bars and nightclubs, which should be clearly distinguished from restaurants.

#### **BEST PRACTICE #6: Regulate home delivery and Internet/ mail-order sales.**

Prohibit home delivery of alcohol, and either prohibit or strictly regulate Internet/mail-order alcohol sales.

#### **BEST PRACTICE #7: Mandate responsible beverage service programs.**

Initiate, and over time, mandate communitywide responsible beverage service programs designed in conjunction with compliance checks and other policy interventions.

#### **BEST PRACTICE #8: Carry out compliance check programs.**

Institute comprehensive compliance check programs that are ongoing and communitywide; include a media advocacy component, and follow strict guidelines to ensure fairness.

#### **BEST PRACTICE #9: Impose appropriate penalties for commercial violations.**

Impose strict administrative penalties on retail licensees for violations of sales-to-minors laws, which increase with severity for repeated offenses. Complement administrative penalties in serious cases by permitting civil liability lawsuits against licensees based on common law negligence principles and by imposing criminal sanctions.

### Social/Public Availability

#### **BEST PRACTICE #10: Restrict noncommercial furnishing of alcohol to minors.**

Prohibit any person from furnishing alcohol to a minor, with very few exceptions.

#### **BEST PRACTICE #11: Implement beer keg registration.**

Enact beer keg registration laws that apply to beer containers of 4 gallons or larger; require a minimum \$50 deposit and technology that deters identification tag removal.

**BEST PRACTICE #12: Implement “shoulder-tap” enforcement programs.**

Implement shoulder-tap enforcement programs to deter adult strangers from buying alcohol for minors. Programs should target problematic locales. Instruct retailers regarding their role in preventing shoulder tapping; if the practice continues repeatedly outside a retail establishment and the retailer refuses to take action despite instruction and warning, utilize public nuisance regulations to impose sanctions.

**BEST PRACTICE #13: Implement teen party ordinances.**

Prohibit teen drinking parties at private residences, and impose fines and fees on homeowners or renters for law enforcement services.

**BEST PRACTICE #14: Restrict and monitor teen parties at motels and hotels.**

Develop community programs to ensure that teen parties do not occur in hotels and motels; if minibars are permitted, the establishments should be required to strictly monitor their use by young people.

**BEST PRACTICE #15: Establish alcohol restrictions in public locations.**

Prohibit or strictly limit alcohol consumption and open containers in unsupervised public locations such as beaches, parks, parking lots, and recreation facilities. Require hosts who serve alcohol at private functions in these venues to obtain permits that include responsible beverage service guidelines and a refundable deposit to cover any enforcement costs.

**BEST PRACTICE #16: Apply appropriate penalties to illegal transactions in noncommercial settings.**

Impose civil penalties where applicable; impose a range of criminal penalties and civil liability, either separately or in addition to applicable civil penalties. To increase the penalties’ deterrent effects, establish streamlined procedures for imposing sanctions in cases that do not involve serious community disruption, large teen parties, or bodily injury.

**Minors in Possession of Alcohol**

**BEST PRACTICE #17:** Ban possession by minors in public and private locations.

Prohibit possession by minors (unless incidental to employment) in public and private locations, with a possible exception in private residences when a parent or spouse is present.

**BEST PRACTICE #18: Implement and enforce zero-tolerance laws.**

Prohibit minors with any measurable blood alcohol level from driving a motor vehicle; authorize immediate seizure of the young offender’s drivers license at the scene of arrest as part of an administrative license revocation procedure.

**BEST PRACTICE #19: Ban false identification.**

Prohibit the production, distribution, possession, and use of false identification.

**BEST PRACTICE #20: Apply appropriate penalties to minors in possession.**

Impose administrative license revocation and other administrative and civil penalties where applicable, for violations of zero-tolerance laws. Establish streamlined criminal procedures, and experiment with nontraditional forms of punishment. In more serious cases, impose criminal penalties applicable to the crimes committed as a result of youth possession and purchase. Resist proposals to increase the severity of criminal penalties for youth possession or purchase not associated with other crimes.

## Implementation

Efforts to successfully implement regulatory strategies to reduce underage drinking face formidable barriers. Many States and communities, however, have achieved significant victories that have been measured in lives saved and tragedies averted.

Some key principles can help to maximize the effectiveness of implementation efforts.

### IMPLEMENTATION PRINCIPLE #1: **Set policy and enforcement priorities.**

One key to implementation success is setting appropriate priorities. Each jurisdiction should focus on those strategies that they can implement and that are most likely to have the greatest payoffs. While priorities must be based on local circumstances, the following enforcement priorities are supported by research and practice experience:

- Carry out routine, ongoing compliance checks.
- Prevent and intervene in teen drinking parties in both public and private settings.
- Penalize adult suppliers of alcohol at teen parties.
- Enforce zero-tolerance laws.
- Restrict commercial licenses to reduce youth access.
- Implement shoulder-tap programs to reduce purchase of alcohol for minors by adult strangers.

### IMPLEMENTATION PRINCIPLE #2: **Clarify the roles of State and local governments.**

Both State and local governments have key roles to play in the establishment and enforcement of regulations designed to reduce underage drinking. In order to maximize effectiveness, each level of government should adopt concurrent State and local authority to establish and enforce youth access regulations and avoid the State preemption doctrine. They should also promote partnerships between State and local agencies responsible for implementing and enforcing the regulations.

### IMPLEMENTATION PRINCIPLE #3: **Foster youth participation and activism.**

Citizen activism is central to the implementation of regulations. In particular, the participation of youth is key. States and communities should create opportunities for youth involvement and leadership in developing, implementing, and enforcing youth access regulations—to include working with schools, parents, alcohol policy coalitions, government agencies, and other community institutions and members.

## Regulatory Strategies: Part of a Comprehensive Goal

If States and communities work toward incorporating these best practices into their regulatory structures and processes, they can expect progress in reducing underage drinking and related problems.

Youth alcohol access regulations comprise only one aspect of a comprehensive community prevention strategy. Their potential for reducing youth alcohol problems will be greatly enhanced in community environments that deglamorize alcohol use, provide alcohol-free activities, send clear messages regarding the risks associated with alcohol, offer easy access to recovery services for all ages, and include reasonable regulations that target alcohol availability generally. Alcohol taxation is a particularly important complementary strategy.

The regulatory strategies outlined in this guide cannot be viewed in isolation. Their success and continuation can be assured only by building a foundation of community participation and activism and developing complementary policies and programs designed to shift community norms and expectations. This is a worthy goal that builds community collaboration and provides participants with a sense of accomplishment in both process and outcomes. The stakes are enormous: the safety and health of our young people—the heart of our country's future.

# Acknowledgements

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This guide was written by James F. Mosher, J.D., of the Marin Institute for the Prevention of Alcohol and Other Drug Problems and Kathryn Stewart of the Pacific Institute for Research and Evaluation.

The opinions expressed here are those of the authors and do not necessarily reflect the official position or policy of the U.S. Department of Justice.

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# Introduction

## The Impact of Minimum Age Drinking Laws

For more than two decades, the people of the United States have benefited from a uniform minimum legal drinking age (MLDA) of 21.1. This has been one of the most successful public health regulations ever implemented (Voas, 2006). Many thousands of lives have been saved and tragedies averted. According to the National Highway Traffic Safety Administration, the MLDA law has saved almost 24,000 lives in traffic crashes alone since 1975, when States began raising the drinking age. Minimum age drinking laws have positive public health benefits beyond reducing traffic crash fatality rates. O'Malley and Wagenaar (1991) conclude that establishing a higher minimum drinking age results in lower youth drinking rates, including those for young teenagers and young adults in their early twenties. As alcohol becomes less available to older adolescents (when the legal age is raised from 18 to 21), younger cohort drinking rates decline. Jones, Pieper, and Robertson (1992) found a 3.9-percent decline in fatality rates for unintentional injuries other than traffic crashes associated with the higher drinking age; Parker and Rebhun (1995) concluded that the higher drinking age results in lower rates of youth homicide; and Wagenaar (1993) notes that delaying regular drinking in adolescence may reduce rates of alcohol addiction and other long-term alcohol and other drug problems in adulthood.

Minimum drinking age laws are highly effective, but they do require continued commitment and effort. Alcohol continues to be consumed by a substantial proportion of the nation's youth. The 2008 national Monitoring the Future study indicated that 16% of 8th graders, 29% of 10th graders, and 43% of 12th graders reported any alcohol use in the past 30 days. In these grades, 8%, 16% and 25% of youth report having 5 or more drinks on at least one occasion in the past two weeks (Johnston et al., 2009). The annual social cost of underage drinking in the U.S. was conservatively estimated to be \$61.9 billion in 2001 (Miller et al., 2006).

All States have enacted legal provisions designed to restrict minors' access to alcohol, and numerous communities throughout the country have built on the States' laws and regulations, developing local programs and ordinances. Some States and local governments have prioritized the issue of youth access, developing innovative programs and devoting considerable resources to work with retailers and to increase enforcement efforts.

This guide builds on the inference that reducing young people's ability to obtain alcohol will reduce youth alcohol consumption and related problems. It describes the various regulatory measures that can be taken to meet this goal and presents a set of "best practices" recommendations for establishing a comprehensive regulatory structure. Recommendations are based on a legal analysis of the regulatory options and a review of available research on their effectiveness.

As noted in the Overview, this guide divides the regulations into three categories:

1. Chapter 1 describes restrictions on *commercial availability*;
2. Chapter 2 describes restrictions on *social/public availability*; and
3. Chapter 3 describes restrictions on *youth possession*.

Chapter 4 addresses implementation issues: enforcement priorities, the roles of State and local governments, and the importance of youth involvement in prevention efforts. It concludes by examining the role of youth access regulatory strategies in a comprehensive community prevention program.

It is important to note here that restrictions on availability of alcohol that are not aimed at youth may also be successful in reducing youth access. For example, several studies have found a close link between the density of alcohol outlets and the incidence of underage drinking, drinking and driving among youth and youth violence (Scribner et al., 2010; Gruenewald et al., 2010; Alaniz, Cartmill, & Parker, 1998; Parker & Rebhun, 1995). Alcohol-related problem rates are also associated with alcohol prices (lower prices are associated with more problems), the hours and days of the week that alcohol sales are permitted (more liberal hours and days of sale are associated with an increase in problems), and liquor-by-the-drink regulations (permitting liquor by the drink is associated with increased problems). (See Edwards et al., 1994; Wagenaar & Toomey, 1998.) This paper will focus primarily on those regulations dealing with reducing minors' access to alcohol, though these other alcohol regulations should also be kept in mind as potential tools.

# 1

## Commercial Availability

Commercial availability is shaped by State and local regulations, which determine the number, location, types, and serving and selling practices of alcohol retailers. Great variation is evident in how States regulate commercial availability. Some States are very restrictive and may stipulate State ownership of off-sale outlets,<sup>1</sup> limited number and types of outlets, and local prohibition (in “local-option States”),<sup>2</sup> while other States have only limited controls.

One study (Fell et al., 2009) found that laws making it illegal to possess or purchase alcohol by anyone under the age of 21 had led to an 11 percent drop in the proportion of underage drinking drivers involved in fatal traffic crashes. The study also found that there are currently substantial variations in how underage drinking laws are implemented from state to state. Only two MLDA laws are found in all states, namely those against the underage possession of alcohol and the purchase of alcohol by minors. One example of the variations that exists is that although all states make it unlawful for anyone under the age of 21 to possess alcohol, it is not illegal in some states for an underage person to consume alcohol. Another key finding of the study concludes that fake ID laws in the States that have criminal or administrative license suspension sanctions account for about a 7% decrease in underage drinking drivers in fatal crashes. All 50 States and DC have Fake ID laws, but only 6 States have administrative license suspension penalties associated with their laws. Eight States do not have any driver’s license sanction in their Fake ID law.

A comprehensive report on strategies to reduce underage drinking in this country written by a committee established by the National Academy of Sciences called for a set of recommendations for limiting access of alcohol to youth. These policies recommended by the report are embodied in the current set of 16 key underage drinking laws that many states have legislated to control underage

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<sup>1</sup> On-sale (also known as “on-premise”) establishments are those that serve alcoholic beverages for on-premise consumption (e.g., bars, restaurants, etc.). Off-sale (offpremise) establishments are retail outlets such as convenience or package stores.

<sup>2</sup> “Local option” States permit sub-State entities such as counties and municipalities to set alcohol policies locally.

drinking and impaired driving. However, none of the states have enacted all 16 laws, and many states that have these laws provide for important exceptions to them (Fell et al. 2009).

Key legal components for States and localities include the following commercial sales regulations:

1. Strictly prohibit sales to minors, providing few if any exceptions;
2. Limit the types and locations of commercial outlets that are likely sites for youth purchases;
3. Conduct comprehensive compliance check enforcement programs
4. Impose appropriate administrative, criminal, and civil penalties for violations.
5. Mandate serving and selling practices that reduce the likelihood of illegal sales to minors;

## Strict Prohibitions of Sales or Gifts to Minors

Although all States prohibit alcohol sales to minors, some States permit exceptions. For example, in several States, minors can legally obtain alcohol from a commercial vendor if they are accompanied by a parent or guardian, or they can purchase and deliver alcohol to parents if they have a written authorization (Inspector General, 1991). These exceptions further complicate the role and duty of the commercial server in determining who may legally purchase alcohol. If an exception is desired allowing parents or spouses to provide alcohol to minors, it should at least be limited to private residences (see chapter 2). The best practice is to prohibit *all* commercial transactions (including sales and gifts) to those under age 21, as is the practice in most States. As a matter of fairness, commercial vendors should have an affirmative defense that they reasonably or in good faith relied on apparently valid, yet false, identification.

### BEST PRACTICE 1

#### **Ban commercial sales and gifts to minors.**

Prohibit all commercial sales, gifts, or other furnishing of alcohol to minors without exception, and provide vendors an affirmative defense regarding apparently valid, but false, identification.

Lake County, Illinois, has a population of 713,076 as of 2006. In 2007, the Lake County After-School Coalition and the Lake County Chiefs of Police Association jointly established the Lake County Underage Drinking Prevention Task Force. The goals of the Task Force were to have consistent and enforced social host ordinances in all Lake County municipalities to decrease youth access to alcohol and to reduce countywide and community-level acceptance of underage drinking by increasing awareness of associated risks and consequences. Youth leadership and involvement have been crucial in advancing the efforts of the Task Force's efforts. Students were also critical in advancing prevention efforts providing the insight necessary to understand the "underage perspective," but also by developing a youth presentation to advance local policy. They used their presentation to bring a social host ordinance to their village board and to train students from other communities to do the same with their Task Force for dissemination.

The youth helped law enforcement and elected officials to develop strategies to overcome barriers to the passing of social host ordinances across the county, including the development of a script for use in municipality presentations that outlined local data; the importance of working together to keep youth alive, safe, and healthy; and emphasized the position, "Why would you not pass an ordinance to protect youth after hearing all of this information?"

In only one year, 19 Lake County municipalities have either developed and passed a new social host ordinance or amended ordinances to be as inclusive as the model social host ordinance. Four additional municipalities along with the county are currently in the process of adopting the ordinance.

## Licensing Restrictions

### Restricting the Location of Retail Outlets

Restricting the location of alcohol outlets, especially preventing high concentrations of outlet in a given area can reduce underage drinking. How much any individual person drinks is related in part to how much alcohol costs—both in money and convenience. When alcohol is plentiful and inexpensive, many people drink more. This is true of underage drinkers as well as adult drinkers. Because the purchase of alcohol is illegal for young people under 21, easy access to several outlets in a small area makes it easy to find the one outlet that will sell to underage drinkers. In this way, high concentrations of outlets can increase underage use.

A number of studies have found that outlet density is related to underage drinking and problems. One study found that when all other factors were controlled, higher initial levels of drinking and excessive drinking were observed among youths who live in zip codes with higher alcohol outlet densities. Therefore, alcohol outlet density may play a significant role in how underage drinking starts during early teenage years, especially when teens have limited mobility (Chen et al., 2010). In another study, on- and off-license outlet density was found to be positively related to frequency of underage driving after drinking and riding with drinking drivers among 16 to 20-year-old youth (Treno et al., 2003).

Neighborhoods that have many outlets close together also convey the message that drinking—and even heavy drinking—is normal and expected. A study of the density of drinking establishments near college campuses found that more drinking took place among students on campuses with more outlets in the surrounding areas. Outlet density also was related to sexual violence among students (Scribner et al., 2010).

Many States and local governments also restrict the location of alcohol outlets by creating geographic buffer zones between alcohol outlets and schools, playgrounds, other youth facilities, and residential neighborhoods. Distance requirements vary widely—they may apply to only certain types of outlets, and the restrictions may be discretionary by either the State or local licensing body and applicable only if the school administration files a protest. Most States give local jurisdictions discretion to create buffer zones using local land use and zoning ordinances, a strategy that many cities are now using (League of California Cities, 1998; Wittman, 1994).

Youth buffer zones create a barrier between young people and alcohol and have both practical and symbolic benefits. By reducing the number of alcohol outlets that are readily accessible, they make it more difficult for young people to purchase alcohol (cf. Alaniz et al., 1998). In many communities, buffer zones will also reduce the number of convenience stores in residential areas. This may be particularly important near schools, limiting the possibility of student consumption during and after school (for discussion, see Mosher, 1998). They also send a community message that alcohol and young people are not a good mix. To be effective, buffer zones require a large enough geographic area (Wittman [1998a] recommends 1,000 feet) and permit only limited exceptions.

### BEST PRACTICE 2

#### **Restrict the location of alcohol outlets.**

Limit the density of alcohol outlets and create buffer zones that extend at least 1,000 feet to separate alcohol outlets from schools, youth facilities, and residential neighborhoods; that can be applied retroactively; and that permit only limited exceptions based on local circumstances.

The Shoulder Tap Decoy Program has been recognized as an excellent method to attack the problems associated with the unlawful purchase and consumption of alcoholic beverages by young people. When used regularly, the percentage of licensees selling to minors drops dramatically. In response to this successful operation, minors turned to the “shoulder tap” method of getting alcohol by standing outside of a liquor store or market and asking adults to buy them alcohol. A recent survey conducted by the Los Angeles Police Department indicated that 46 percent of all minors who attempt to acquire alcohol use this method.

In response to that information, investigators from the California Alcoholic Beverage Control (ABC) joined forces with more than 30 other law enforcement agencies on Saturday, March 14, 2009, in what is noted as the largest Shoulder Tap Decoy Operation ever conducted in California. In addition to the ABC investigators, the task force consisted of approximately 180 police officers representing the following agencies: Modesto Police, Sacramento Police, Sacramento County Sheriff, Calaveras County Sheriff, Pacifica Police, San Bruno Police, South San Francisco Police, Brisbane Police, Broadmoor Police, Daly City Police, Half Moon Bay Police, Berkeley Police, UC Berkeley Police, Millbrae Police, Colma Police, Burlingame Police, Fairfield Police, Grass Valley Police, Nevada County Sheriff, Nevada County Probation, Martinez Police, Oakdale Police, Rohnert Park Police, Cotati Police, Sonoma State University Police, Healdsburg Police, Sonoma County Sheriff, Rocklin Police, Roseville Police, Lincoln Police, Sacramento Regional Transit Police, Stanislaus County Sheriff, Stockton Police, Turlock Police, Vacaville Police, and the University of Pacific Police. The operation targeted adults who purchased alcohol for youth aged 20 and younger. The Saint Patrick’s Day Weekend 2009 operation sent a strong safety message before spring Break.

The huge task force operation resulted in approximately 170 citations and bookings. One hundred and twenty-six individuals were cited for

furnishing alcoholic beverages to minors; another 24 were arrested for other violations, including driving under the influence, illegal narcotics, drunk in public, probation violations, and stolen vehicle charges. “These kinds of operations do make a difference,” said Mark Gedney, an ABC investigator. “The stores start checking more for IDs. The kids find it harder to find people to buy them alcohol.”

Stanislaus County sheriff’s deputy Tom Letras, who helps coordinate the operations conducted in the outlying areas in the county, agrees that consistency makes a difference. “After getting multiple violations, they start to realize this is getting pretty expensive.” Those who break the law and knowingly buy beer for the minors are arrested and cited with a misdemeanor, which carries a \$500 fine for first-time offenders. As many as 40 hours of community service could be added to the penalty. The fine can increase to \$1,500 for those with criminal records or warrants or those who commit additional crimes during the operation. The decoys usually are recruited from the police Explorers and other youth enforcement organizations. “We want honest kids, who look their age,” said Rokaitis, adding “the decoys can’t lie during the operations.”

A follow-up operation was equally successful. Working with local enforcement agencies throughout the State, in May, the ABC reported 272 minors were cited for possession or consumption of alcohol, 128 persons were cited for selling alcohol to minors, and 142 adults were cited for purchasing alcohol for persons younger than age 21. During the month-long effort, they approached 1,218 individuals in an attempt to buy alcohol for minors. That’s approximately a 78% nonsale/purchase rate. The program’s success can also be measured quantitatively by the reduction in alcohol-related arrests, crimes, and calls for services. Further qualitative measures include statements of satisfaction from local officers and community members, and visible improvements in the physical conditions of communities. This story highlights California’s successful operation through effective collaboration and consistency in enforcement.



## Restricting Special Licenses for Youth- or Family-oriented Community Events

States and/or local governments typically issue special, temporary licenses for alcohol sales at special events such as music concerts, community fairs and celebrations, and sporting events. Some venues, such as sporting arenas or concert halls, may receive a special events license that permits ongoing sales on the premises and is not limited to a specific event. Criteria for special events licenses vary, although in most jurisdictions they are readily available at low cost with few restrictions. Licensees may be nonprofit organizations that use alcohol sales as a fundraising strategy. In some cases, the alcohol sales are linked to an alcohol company's sponsorship of the event. In exchange for funding, event organizers agree to sell the company's products and publicize the company's sponsorship.

Alcohol sales at community events create a high risk of underage drinking and related problems, including assaults, drinking and driving, and vandalism (Gliksman, Douglas, Rylett, & Narbonne-Fortin, 1995; Pratt, Rothstein, Meath, & Toomey, 1997). States and local jurisdictions have taken various steps to reduce these risks, including:

- Restricting the issuance of licenses at youth-oriented and family events;
- Prohibiting alcohol sales at specific venues popular with young people;
- Designating alcohol-free days or periods within longer events such as community fairs;
- Establishing restricted drinking sections at special events where young people are not permitted to enter;
- Prohibiting participants from bringing alcohol into the event; and
- Requiring responsible beverage service management policies and training (Institute for the Study of Social Change, 1994a, 1994b; Pratt et al., 1997). Local officials report that such restrictions reduce youth alcohol problems associated with these events (De Lucio, Wilkes, & Alaniz, 1997; Gliksman et al., 1995).

### BEST PRACTICE 3

#### **Restrict alcohol sales at community events.**

Strictly limit alcohol sales and alcohol industry sponsorships at youth- and family-oriented community events; impose strict conditions designed to reduce youth access at special events where alcohol is sold.

Strong market and political forces often oppose such regulations. A decision to ban alcohol sales may threaten an alcohol company's sponsorship of the event. Many politically connected nonprofit organizations are dependent on alcohol sales at special events, and alcohol sales are viewed by many special event planners as an integral, lucrative component. These economic and political forces may deter governmental action. For example, the city council in Greenwood, Mississippi, concerned that a ban would hurt the local economy, rejected a citizen drive to ban beer sales at festivals and events held on city property (*Alcoholic Beverage Control*, 1992). Despite this type of resistance, many communities are successfully imposing new restrictions on such sales.

States and communities should review and reform their licensing practices for special events. Regulations should strictly limit alcohol sales and alcohol company sponsorships at youth- and family-oriented events, reviewing each on a case-by-case basis. If a special license is issued, alcohol should be incidental to the purpose of the event, and strict policies should ensure that sales to young people do not occur. These policies should include requirements that the organizer create a designated, cordoned-off area for alcohol sales and consumption where young people are not allowed, and provide adequate training to staff and security. Nonprofit organizations should be permitted a limited number of special licenses in a year (Mosher, 1991). For sample model ordinances, see LaFond, Klautdt, Toomey, and Gehan, 1998, and Wittman, 1998a.

Some communities use methods other than designating a cordoned-off area to prevent sales to minors at community events. These include issuing wristbands to people over 21 to indicate that they can buy alcohol. Such strategies are easily subverted. Restricting access to the area where alcohol is sold is the most effective means of reducing access to alcohol by minors at community events.

## Regulations for Serving and Selling Practices

### Age of Server and Seller

States impose varying limits on the minimum age of employees working in commercial alcohol outlets, with many States distinguishing between those who serve alcohol (e.g., bartenders and waitresses in on-premise establishments) and those who sell it (e.g., clerks in off-premise establishments). Virginia and North Carolina impose no age limit for off-premise employees but set a minimum age of 18 (Virginia) and 21 (North Carolina) for alcohol servers.

Minimum ages vary from 16 to 21 years of age in other States, with the large majority designating 18 as the minimum age for either sales or service. Some States, including California, allow 18-year-olds to sell alcohol, provided they are continuously supervised by someone over age 21. Other States distinguish between bartenders and grocery store employees (National Alcohol Beverage Control Association [NABCA], 1998). In most States, the age limits do not apply to employees who are not engaged in selling or serving alcohol.

Research confirms the observations of many people involved in enforcing laws prohibiting sales to minors and implementing responsible beverage service programs: underage sellers and servers have a greater difficulty refusing sales to underage buyers because they are more likely to misjudge the customer's age, make exceptions for friends and acquaintances, and respond to peer pressure (Forster et al., 1994; Inspector General, 1991; Mosher, 1991; Wagenaar et al., 1993; Wolfson, Wagenaar, & Hornseth, 1995).

### BEST PRACTICE 4

#### **Restrict the age of alcohol servers and sellers.**

Require that all retail alcohol outlet employees who are engaged in the sale or service of alcohol be at least 21 years of age.

Unfortunately, economic interests, particularly those of the restaurant industry, are lobbying for legislation to ease server and seller age limits. New Mexico, for example, lowered its age limit from 21 to 19 (except for bartenders) in March 1999 as a means to create jobs for young people (*Alcoholic Beverage Control*, 1999). This lobbying effort is occurring despite a recent national survey that found that nearly 80 percent of respondents favor laws that require all servers and sellers to be at least 21 years old (Harwood, Wagenaar, & Zander, 1998).

### Restrictions on Minors' Access to Public Drinking Establishments

State and local regulations vary widely in the extent to which they permit minors to enter on-sale retail alcohol outlets (Inspector General, 1991). Most States restrict minors' access to bars and nightclubs and allow them to enter restaurants, and some States prohibit minors from entering any licensed establishment. If the distinction between a bar and a restaurant is blurred, problems can result. California law, for example, permits minors to enter licensed restaurants, but restaurants are required only to have the *capacity* to serve meals, and many maintain bars on the premises and function more as nightclubs, particularly late at night (California Business & Professions Code §§ 23787, 25665).

Allowing minors into drinking establishments such as bars and nightclubs is, in the words of one enforcement official, "a regulator's nightmare" (Inspector General, 1991). It creates numerous difficulties for servers, who must conduct repeated identification checks and continuously track who is actually drinking the beverages being served. If minors are barred from the establishment, age identification checks can occur primarily at the door,



conducted by a trained employee using proper tools and lighting, thus greatly reducing the ability of minors to obtain alcohol on the premises. The restaurant exception should be applied only to bona fide restaurants that provide table service, maintain a high ratio of food to alcohol sales, and do not have a separate bar or drinking section accessible to minors.

#### BEST PRACTICE 5

##### **Restrict minors' access to bars and nightclubs.**

Prohibit minors from entering bars and nightclubs, which should be clearly distinguished from restaurants.

### **Home Delivery and Internet sales**

Underage youth use home delivery services to purchase alcohol. Ten percent of 12th graders and 7% of 18- to 20-year-olds in 15 Midwestern communities reported that they obtained alcohol through delivery services in the last year. Use of delivery services was more prevalent among young males and more frequent, heavier drinkers (Fletcher et al. 2000).

As these findings suggest, home deliveries open an additional avenue for youth access to alcohol. Delivery personnel are not monitored by management, surveillance cameras, or law enforcement, so they may be less likely to inspect identification; and young people may also feel less risk of exposure or penalties for these purchases. If asked for identification, they can simply say the person ordering the alcohol is not present. Home delivery may also be one means to supply teen parties in private residences, which often involve large quantities of alcohol, including kegs.

Internet and mail-order sales raise similar concerns, and there have been numerous reports of shippers leaving alcohol addressed to children at private residences (e.g., Armstrong, 1995). Controls are even less likely in these cases, since the deliveries are being made by firms whose normal business is

not alcohol sales, thereby making them less familiar with legal requirements regarding underage sales and proper identification. No research has been published on the prevalence of young people ordering alcohol through the Internet or by mail order, however, and the risk appears smaller than that for home delivery for at least three reasons: (1) this method of purchase takes a long time (at least a week in most cases); (2) credit cards are usually required; and (3) the products being offered are more likely to be expensive.

Internet and mail-order sales have stimulated a contentious political battle, however, not only because they might increase access to minors but also because State tax agencies are concerned about lost tax revenues, and alcohol wholesalers are concerned that their markets may be undermined. The wholesalers have joined with several organizations including public health groups to form Americans for Responsible Alcohol Access (ARAA). This coalition seeks to prohibit Internet/mail-order alcohol sales, arguing that they increase alcohol access to minors (ARAA, 1999; *Kane's Beverage Week*, 1997). Small wineries, which oppose regulation, argue that restrictions violate their constitutional rights under the interstate commerce clause. They also contend that wholesalers are seeking controls not because of risks of selling to minors but because they want to maintain a monopoly on all alcohol distribution in their territories (*NBC News Online*, 1997). Congress and many State legislatures are now grappling with these conflicting economic, interstate commerce, and health agendas.

If States permit either home delivery or Internet/mail-order sales, they can reduce the risk of youth access by establishing strict procedures similar to those used in beer keg sales (see chapter 2). As a condition of sale, the deliverer should be required to fill out a form that includes the amount of alcohol being purchased, the purchaser's drivers license or State identification card number, and an affidavit signed by the purchaser confirming that he or she is

at least age 21 and understands the civil and criminal penalties for furnishing alcohol to minors. The deliverer should be required to maintain these files for a set period of time and produce them to enforcement agencies on demand; failure to maintain records should result in administrative penalties (Pratt et al., 1997; for sample ordinance, see LaFond et al., 1998). The purchaser can similarly be held liable both criminally and civilly if he or she furnishes the alcohol to minors.

#### BEST PRACTICE 6

##### **Regulate home delivery and Internet/mail-order sales.**

Prohibit home delivery of alcohol and either prohibit or strictly regulate Internet/mail-order alcohol sales.

### **Mandated Responsible Beverage Service Programs**

Responsible beverage service programs target both on-sale and off-sale alcohol retailers and are designed to reduce sales to minors and intoxicated adults. They include three critical components:

1. Policy development,
2. Manager training, and
3. Server/seller training (Mosher, 1991).

Responsible Beverage Service has been found to have an impact on underage drinking. Paschall et al. (in press) found that outlets participating in Oregon's Responsible Vendor Program, a comprehensive program that includes responsible beverage service, were less likely to sell alcohol to underage-appearing buyers than outlets not participating in the program. Other studies indicate that responsible beverage service can increase checking age identification and reduce alcohol sales to minors or intoxicated patrons (Saltz, 1997a; Toomey et al., 2001).

In general, programs are more likely to be successful when they include a policy development component, focus on skills development and active learning, and are implemented communitywide in conjunction with compliance checks and a media advocacy campaign (Grube, 1997; Saltz & Stanghetta, 1997; Toomey et al., 1998). Compliance checks may be particularly important to ensure success of the underage sales component (Grube, 1997). Two studies suggest that mandated responsible beverage service programs that require all establishments in a jurisdiction to participate are more effective than programs implemented on a voluntary basis (Dresser, 1998; Wagenaar & Holder, 1991).

Responsible beverage service programs have become increasingly popular during the 1990's. At least 15 States, as well as numerous local jurisdictions, have instituted mandated programs or encouraged their adoption by offering strong incentives to retailers (Pratt et al., 1997). In Texas, for example, retailers can avoid most forms of dram shop liability<sup>3</sup> if they participate in a responsible beverage service program (Mosher, 1999b). Many communities have instituted community-wide programs, some of which have become mandatory. Many retailers have developed their own programs, sometimes in conjunction with a community program.

Unfortunately, research findings have not played a major role in this implementation process. Most programs focus primarily on server training and ignore policy development and manager training. Often they lack a community component. In some cases they are instituted by industry groups as an alternative to, instead of in conjunction with, compliance checks and other policy interventions (Mosher, 1991; Toomey et al., 1998). In such cases, responsible beverage service programs are at best doing no harm.

<sup>3</sup> In dram shop liability, establishments that serve alcohol can be held legally responsible for harm caused by their patrons who are served alcohol illegally.

Responsible beverage service programs focus primarily on sales to intoxicated persons but include a component on preventing sales to minors. A comprehensive curriculum will ensure adoption and implementation of the following policies (on a voluntary basis, if not mandated by the local or State jurisdiction):

- Minimum age of 21 for servers and sellers;
- Staff notification and acknowledgment of legal responsibility and consequences for violation;
- Procedures to ensure that all persons seeking entry or service will be subject to an identification check (including denying entry to bar areas);
- Identification checks for anyone who appears to be age 30 or younger (higher ages in some circumstances);
- Guidelines regarding acceptable identification cards and procedures for establishing validity; and
- Internal compliance checks conducted by management to ensure compliance.

The manager and server training components focus on implementation of these policies, using active learning techniques. (For discussion, see Mosher, 1991; Prevention Research Center, 1996). The training should emphasize management policies that are likely to lead to more responsible practices. Mandate responsible beverage service programs. Initiate and, over time, mandate communitywide responsible beverage service programs designed in conjunction with compliance checks and other policy interventions.

#### BEST PRACTICE 7

##### **Mandate responsible beverage service programs.**

Initiate, and over time, mandate communitywide responsible beverage service programs designed in conjunction with compliance checks and other policy interventions.

## Compliance Checks (Decoy or Sting Programs)

Routine, comprehensive compliance checks are the key strategy for deterring commercial alcohol sales to minors. They involve the use of underage buyers by law enforcement agencies as deputies to test retailers' compliance with laws regarding the sale of alcohol to minors. A comprehensive program consists of the following components:

- Notification to retailers, including the program's goals, procedures, and timeframes;
- Opportunity for retailers to participate in responsible sales and service programs prior to the start of the compliance check;
- Community outreach and media advocacy to publicize the program's design and purpose;
- Random selection of outlets to be included in the initial wave of the program (100-percent coverage if feasible);
- Followup communication informing each retailer of the results; and
- Repeated notifications to licensees of the ongoing compliance check program and repeated waves of checks over set periods of time (two or more times per year), which may include targeted checks of retailers identified as violators in previous waves (Fitch, Toomey, Gehan, & Wagenaar, 1998; Grube, 1997).

Properly administered compliance checks sharply reduce illegal sales to minors. Grube (1997) reports the results of a comprehensive program implemented in three experimental communities as part of the Community Trials Project administered by the Prevention Research Center. Outlets in the experimental sites were about half as likely to sell alcohol on a posttest purchase survey as outlets in the comparison sites, dropping from a range of 33 percent to 72 percent to a range of 4 percent to 33 percent. Preusser, Williams, and Weinstein (1994) reported that a compliance check program in Denver, Colorado, resulted in reduced sales to underage

police cadets from 58 percent to 26 percent over a 10-month period, after three waves of enforcement. Fitch et al. (1998) report similar or greater declines in two local programs. Lewis et al. (1996) offer additional evidence that compliance checks will reduce youth sales, even when implemented by a community coalition without direct law enforcement involvement. Florida has maintained a compliance rate of 88 percent to 90 percent as a result of 20 years of consistent compliance investigation.

Compliance checks, of course, address only commercial availability. As this avenue for obtaining alcohol is curtailed, young people will likely find

alternative avenues through social sources (Wagenaar et al., 1996; see chapter 2). Research studies have not assessed the extent to which this substitution may occur, although overall youth consumption will probably decrease as commercial availability diminishes. Grube's findings (1997, 1998) suggest that compliance check programs will reduce youth consumption, at least when they are combined with other community interventions. Forster et al. (1998) report substantially lower increases in smoking among teenagers in communities adopting tobacco compliance check programs compared to those in control communities.

The goal of the Georgia Underage Alcohol Investigative Group (UAIG) is to decrease the commercial availability of alcohol to underage persons at licensed alcohol outlets. Using funds from an earlier Enforcing Underage Drinking Laws (EUDL) grant through the Governor's Children and Youth Coordinating Council, the UAIG collected and compiled data on the availability of alcohol to underage persons and violation information from compliance investigations. This protocol has been sustained with current EUDL funding through the Governor's Office of Children and Families.

Historically, UAIG has conducted random compliance inspections at the request of other law enforcement agencies and upon receipt of citizen complaints. This success story shares the effective use of data and protocol updates (color-coded tracking) that resulted in collaborative partnerships and improved compliance rates.

During FY 2008 with financial support from Georgia's Department of Human Resources (DHR), the UAIG committed to identifying all licensed alcohol outlets in each of Georgia's 159 counties. It conducted a compliance investigation operation in each of the 159 counties. Using data provided by DHR, UAIG prioritized counties for underage compliance operations based upon the aggregate of the values expressed in the DHR's Social Indicator Study concerning a 0.1 rating or higher on the following categories: Underage Alcohol-Related Vehicle Crashes and Alcohol Licenses per thousand. Data on the results of the compliance operations were tracked using a two-color-coded map of Georgia. The

two tracking colors were green (> 20% noncompliance) and red (< 20% noncompliance). During FY 2008, the UAIG conducted 2,954 compliance investigations with a total of 893 sales, resulting in a noncompliance rate of 30 percent. This provided more accurate statewide data and a true baseline representing the overall commercial availability of alcohol to minors.

During FY 2009, the UAIG conducted follow-up operations of businesses found in violation in those counties that had a noncompliance rate of 20 percent or higher during the initial statewide operation. They used the multicolor-coded map to track any increase in compliance. Working with the strategy of consistent enforcement efforts, UAIG began a third statewide initiative to conduct compliance checks in all 159 counties. The UAIG again used a color-coded statewide map to track its progress and its violation rates. The two tracking colors were blue (> 20% noncompliance) and yellow (< 20% noncompliance). During this period, UAIG conducted 3,320 compliance investigations with a total of 576 sales giving the period a noncompliance rate of 17 percent.

By conducting these statewide, collaborative initiatives, the data reflect the noncompliance rate, which has been reduced from 30% in FY 2008 to 17% in FY 2009. It is the department's belief that the sustained presence of the UAIG and the relevant media coverage will continue to reduce the commercial availability of alcohol to underage persons. This Success Story shares the value of effective partnerships and strategic use of visibly presented data in bringing about sustainable change.

## BEST PRACTICE 8

**Carry out compliance check programs.**

Implement comprehensive compliance check programs that are ongoing and communitywide; include a media advocacy component; and follow strict guidelines to ensure fairness.

To be effective, the programs must avoid several common weaknesses. First, they need to be conducted routinely. One-time compliance checks will have little or no long-term effect. Second, they must be community-wide and build community support, without which industry opposition will likely result in the program being terminated or curtailed. Third, they need to be well designed to ensure that the procedures are fair and not subject to either political or legal attack (for discussion, see Pratt et al., 1997). Finally, ongoing funding sources need to be established. Compliance checks can be made self-supporting through special license fees and/or by recycling fines for violations.

A well-designed compliance check program gives retailers full notice of the impending program, offers assistance and training, uses decoys who are clearly underage, and avoids false identification or any other trick or subterfuge to encourage an illegal sale. Because compliance appears so easy, it is surprising that violation rates are so high. At the same time, communities find that a large percentage of establishments do comply, particularly after one warning. This undermines the arguments made by violators that the programs constitute unfair entrapment. It also supports reports from young people and law enforcement personnel that youth buyers know which retailers in the community are likely to sell to them and which retailers they need to avoid. The program's goal is to send a clear message to those who consistently ignore their legal responsibility: either follow the example of complying licensees or face stiff penalties, including the possible loss of your license.

## Penalties for Violating Commercial Availability Restrictions

Violation of commercial availability restrictions can lead to three types of penalties, which can be imposed separately or concurrently: *administrative*, *criminal*, and *civil liability*. Each has distinctive purposes, consequences, and roles in a comprehensive prevention program.

*Administrative penalties* target the retailer's State and/or local operating license. State and local governments issue alcohol retail licenses as a necessary condition to conduct business and, through the regulatory process, establish standards of conduct for selling alcohol.<sup>4</sup> The license establishes a privilege, not a right, and governments have the authority to suspend or withdraw the privilege or impose a fine on the business if the standards of conduct are violated.

*Criminal penalties*, in contrast, target the individual committing the violation rather than the license. Criminal law establishes moral judgments regarding individual behavior. Penalties, which may include fines, imprisonment, and/or probation, are assessed against the offender and may carry grave consequences for the individual's future. Because of the gravity of this process, the U.S. Constitution's Bill of Rights establishes the basic rights of an individual to a fair criminal procedure (for discussion, see Mosher, 1995).

*Civil* (or "dram shop") *liability* involves private lawsuits to recover monetary damages caused by the negligence of another and rests on a separate set of legal principles that does not involve direct government action. In a civil liability action, an alcohol retailer who furnishes alcohol to a minor can be sued in a private lawsuit and held responsible for the damage caused by the minor while under the influence of the alcohol (Holder et al., 1993).

<sup>4</sup> Control States operate State stores as well as license private establishments. They can use employee disciplinary policies in the State stores to penalize poor management or server performance.



All States impose both criminal and administrative penalties for illegal sales of alcohol to minors, although the specific sanctions vary. In many States, local governments can establish separate administrative structures for licensing alcohol outlets, which may include administrative penalties (Pratt et al., 1997). Civil liability law, on the other hand, varies from State to State and cannot be imposed at the local level (Holder et al., 1993; Mosher, 1999b). Some States do not impose any civil liability on alcohol retailers, holding as a matter of law that the minor drinker is entirely responsible for any damage he or she causes. This is a minority position that contradicts basic concepts of negligence law applied to most other business enterprises. Most States recognize civil liability, but many have placed restrictions on its application. In California, for example, lawsuits are allowed only if the retailer sells or serves to an obviously intoxicated minor. (California Business & Profession Code § 25602.1). Other States that recognize the civil liability doctrine do not require evidence that the minor was intoxicated at the time of the sale (Mosher, 1999b). Some States have strict notice and statute of limitations requirements, place limits on the damages a plaintiff may recover, or restrict who has standing to bring a lawsuit (Mosher, 1999b).

From a public health perspective, the purpose of sanctions is to reduce or deter future violations, thereby improving the community's health and safety. Research on deterrence shows that, in order to be effective, there must be a credible threat that a significant negative consequence will occur. The threat must be perceived to be swift and certain, and, for the effect to be maintained, the threat must be perceived to continue over time. Increasing penalties will have little or no effect when the other elements (swiftness, certainty, and continuity) are not present (Ross, 1992).

Using these criteria, administrative penalties are clearly the most effective mechanism for deterring illegal alcohol sales to minors. They create a credible, severe threat—significant reduction in the profitability of the business and, in serious cases, the loss of the business. Licensees will perceive the

penalty as relatively certain if it is tied to a well-publicized compliance check program and it can be imposed relatively swiftly.

Administrative actions are much less complex than their criminal counterparts. They can be held before civil officers in administrative hearings, require a lower burden of proof, and occur in a more timely manner. They are also more certain. Criminal dockets are typically clogged, and long delays are common. District attorneys and judges may view alcohol sales violations as relatively minor compared to other crimes, resulting in early dismissals. Administrative penalties are therefore easier to impose and less expensive. They also can be made self-supporting by recycling fines collected to pay the costs of administration (Pratt et al., 1997; Preusser et al., 1994).

Administrative penalties have an important additional advantage over criminal sanctions. Because they target the license, they hold the licensee/ owner primarily responsible for the violation. Management policies and manager/server training, which are the responsibility of the licensee, are crucial to maintaining a safe and responsible alcohol establishment (Mosher, 1991). Employee malfeasance can be addressed by the licensee through internal disciplinary action. Administrative sanctions, therefore, target the individuals who are in the best position to prevent future violations. Criminal law, on the other hand, holds the server/seller primarily responsible for the illegal sale, and the licensee may be absolved from any responsibility. They target individual malfeasance but do not focus on the business or environment that is creating the public health risk. In public health terms, administrative penalties promote environmental or systems change, the most effective prevention strategy (Holder, 1998).

To be effective, administrative penalties should impose real costs on the violator and increase in severity for repeat offenses (Inspector General, 1991). In California, for example, the first offense usually results in a fine and recommendation that the

licensee enroll in a responsible beverage service program; the second offense within 36 months will most likely lead to license suspension; and a third offense within 36 months may result in license revocation (California Business & Professions Codes §§ 25658; 25658.1).

While penalties should be significant, it is important that they not be too severe, especially for first offenses. Law enforcement officials are less likely to impose penalties if the punishment is perceived as too severe and out of proportion to the seriousness of the offense.

Civil liability and criminal sanctions complement administrative penalties. Once established by statute or court decision, civil liability does not require direct government action. Because of the expense and complexities of the process, civil liability cases are generally limited to more serious injury cases. They share two important advantages with administrative penalties: they target the licensee (who is held responsible for the action of his/her employees), and they focus at least indirectly on

management policies (Holder et al., 1993). Research studies have found that imposing civil liability reduces alcohol-related traffic crash deaths, probably because of these advantages and in spite of the lack of swift or certain punishment (Sloan, Reilly, & Schenzler, 1994; Wagenaar & Holder, 1991). Because of their relative severity and expense, criminal sanctions should also be reserved for more serious cases, particularly where the illegal sale resulted in serious injury or death.

#### BEST PRACTICE 9

##### **Impose appropriate penalties for commercial violations.**

Impose strict administrative penalties on retail licensees for violations of sales-to-minors laws, which increase with severity for repeated offenses. Complement administrative penalties in serious cases by permitting civil liability lawsuits against licensees based on common law negligence principles, and by imposing criminal sanctions.





# 2

## Social/Public Availability

Regulating commercial availability is an important step in reducing youth access to alcohol, closing a ready source for young people and sending a message that the community takes the minimum age drinking law seriously. However, it is only a first step in the process. Research shows that young people also obtain alcohol through social sources—parents and relatives, friends, and strangers who purchase as a favor or for a fee (“shoulder tapping”) (Preusser, Ferguson, Williams, & Farmer, 1997; Wagenaar et al., 1993, 1995). Wagenaar et al. (1996) found that persons over age 21 were the most common source of alcohol. Youth consumption occurs primarily outside commercial establishments and most frequently in private residences and in open areas such as parks or beaches (Mayer, Forster, Murray, & Wagenaar, 1998).

Addressing the noncommercial sources of alcohol and settings for youth drinking is clearly a high priority. It requires a multifaceted approach designed to shift community norms and cultural values. Interventions can include developing parent support networks and education groups, neighborhood watch programs, alternative alcohol-free community and youth events, and youth leadership programs. The focus here is specifically on regulatory strategies that will complement nonlegal approaches and serve as important vehicles for encouraging the shifting of norms and values.

### Noncommercial Sources of Alcohol (Social Availability)

#### **Restrictions on Furnishing Alcohol to Minors**

All States restrict a minor’s ability to obtain alcohol through noncommercial sources, although most statutes provide some exceptions, particularly for parents, spouses, and guardians. Texas, for example, prohibits any person from furnishing alcohol to a minor unless he or she is an adult parent, guardian, or spouse and is visibly present when the minor possesses or consumes the alcohol (Texas Alcoholic Beverage Code § 106.06). The parental/spouse exception may be limited to private residences or may extend to bars and restaurants. Many States,

including California and Nevada have created an ambiguity by prohibiting any noncommercial furnishing of alcohol to a minor but allowing minors to possess alcohol in private residences or under the direction of an adult parent, spouse, or guardian (California Business & Professions Code §§ 25658, 25662; Nevada Revised Statutes § 202.020). Many States do not extend the prohibition to private residences under adult supervision (e.g., Utah Code Annotated §32A-12203) (President's Commission on Model State Drug Laws, 1993). Other exceptions involve medicinal and religious uses of alcohol.

As these exceptions suggest, many States are reluctant to invade the privacy of residential dwellings and parent-child and marital relationships. This is in keeping with a fundamental cultural value, although the President's Commission (1993), recommends against any residential exception because it “sends mixed and confusing signals to parents and youths alike that underage drinking is tolerable under certain circumstances.” An exception, if included, needs to be carefully crafted so that it does not undermine the community's ability to prevent teen drinking parties in private residences. If an adult parent, spouse, or guardian exception is included, it should require that the adult be present and supervising the minor child or spouse. The exception should not extend to other minors and should not limit the enforcement of teen party ordinances (see below).

#### BEST PRACTICE 10

##### **Restrict noncommercial furnishing of alcohol to minors.**

Prohibit any person from furnishing alcohol to a minor with a possible exception of allowing adult parents, guardians, or spouses to serve alcohol to their children or spouse in their private residences.

### **Keg Registration**

Wagenaar et al. (1993) confirm anecdotal reports that beer kegs are a popular source of alcohol at teen parties. They provide alcohol at the cheapest price and require only one purchase, usually arranged with a friend over age 21. The low cost and high volume contribute to heavy, problematic drinking. Research has shown that young people are particularly price sensitive and that raising prices will reduce heavy drinking (Chaloupka, Saffer, & Grossman, 1993; Laixuthai & Chaloupka, 1993). Kegs also complicate law enforcement efforts to trace the alcohol suppliers for teen parties. Partygoers may pay a door fee or use some other mechanism to cover the cost, which may create a profit for an enterprising host and leave law enforcement officers no way to trace the purchase to a particular individual.

Keg registration regulations reduce this form of noncommercial availability. They require retailers to attach a tag, sticker, or engraving with an identification number to the keg. At purchase, the retailer requires a refundable deposit and records the purchaser's name, address, telephone number, and drivers license or other identification information. The deposit is refunded when the keg is returned intact with the identification number. If law enforcement personnel confiscate a keg at a teen party, they can easily trace the purchaser and impose appropriate sanctions. Although there is no research that specifically assesses the impact of this intervention, reports from law enforcement agencies suggest that it substantially reduces young people's keg use (Institute for the Study of Social Change, 1994c).

Recent research, however, finds that states with keg registration laws did not have fewer alcohol related traffic crashes involving underage drinkers. Possible reasons for this finding include that the law was not well enforced, or that in states that adopted keg registration laws, to circumvent the issue of registering beer kegs, young people choose instead to bring their own beer or liquor to underage parties (Fell 2009).

To maximize their effectiveness, keg registration laws should apply to 4gallon-or-larger containers, require retailers to keep records for at least 1 year, and impose a substantial fine for anyone who violates the law (merchants who sell kegs without proper registration, keg purchasers who provide alcohol to minors). They should also require a refundable deposit (Pratt et al., 1997 recommend a \$50 minimum) to deter purchasers from destroying the identification tags and abandoning the keg, and make tag removal more difficult (for discussion, see Institute for the Study of Social Change, 1994c; Pratt et al., 1997).

**BEST PRACTICE 11****Implement beer keg registration.**

Enact beer keg registration laws that apply to beer containers of 4 gallons or larger; require a minimum \$50 deposit and technology that deters identification tag removal.

**“Shoulder-tap” Enforcement Programs**

“Shoulder tapping” refers to the common practice used by minors to obtain alcohol from strangers near off-sale retail outlets. Minors will wait outside the premises (in the parking lot or on the sidewalk), approach adults who are about to enter, and request that the adult purchase alcohol for them. The young person may offer the adult a fee or a portion of the alcohol purchased in exchange for conducting the transaction. These offers attract some adults, including street alcoholics.

Shoulder-tap enforcement programs are similar to compliance check programs except that they target the noncommercial supplier. A young decoy approaches adults outside an alcohol outlet and requests that the adult purchase alcohol on the decoy’s behalf. The California ABC Department has established procedures for shoulder-tap enforcement

programs (California ABC Department, n.d.). It targets the program to locales where problems have been reported and uses the same guidelines for the decoy’s actions as in compliance checks (e.g., no deception, false identification, or attempts to look older). The Department trains local law enforcement agencies, which normally add the program to other enforcement activities, and consults with local district attorneys and judges to ensure that the court system will process any complaints that are filed.

Local retailers can play an important role in shoulder-tap programs. First, most States make retailers responsible for activity in the immediate vicinity of their establishment. If retailers witness a shoulder-tapping incident or if shoulder tapping occurs repeatedly in close proximity but not in direct view, they have a responsibility to take steps to curtail the activity, including reporting it to law enforcement. They should refuse any sale when a reasonable person in their position would conclude that the adult is purchasing the alcohol on behalf of a minor. Responsible beverage service programs and public nuisance regulations should specifically include shoulder-tapping prevention as an alcohol retailer responsibility.

**BEST PRACTICE 12****Implement “shoulder-tap” enforcement programs.**

Implement shoulder-tap enforcement programs, targeting problematic locales. Instruct retailers regarding their role in preventing shoulder tapping; if the practice continues repeatedly outside a retail establishment and the retailer refuses to take action despite instruction and warning, utilize public nuisance regulations to impose sanctions.

## Noncommercial Settings for Youth Consumption

### Teen Party Ordinances

Teen parties constitute one of the highest risk settings for youth alcohol problems (Mayer et al., 1998; Schwartz & Little, 1997; Wagenaar et al., 1993). Young people report their heaviest drinking at large parties with peers—almost all of whom are underage—in someone else’s residence. In some cases, the parties occur without parents’ knowledge when they are out of town. (Policies addressing teen parties that occur in outdoor settings are discussed below.)

Teen parties frequently lack adult supervision and can lead to serious health and safety problems, including drinking-driving, rape and other sexual assaults, other forms of violence, vandalism, and property damage. They also provide a venue for introducing young teens to a heavy drinking culture. In one study, older teens (ages 17-19) reported “breaking in” younger teens (ages 14-16) at teen parties by encouraging them to become very intoxicated (Wagenaar et al., 1993).

Communities report that many parents have a high tolerance for teen parties, allowing them to occur on their property often without any supervision (Wolfson et al., 1995). This tolerance apparently stems from three misconceptions or beliefs: (1) alcohol, particularly beer, is a relatively harmless drug compared to illegal drugs, and its consumption is part of the passage to adulthood; (2) permitting consumption in a residential setting is safer than having it occur in open areas, where there is a higher risk of problems; and (3) teen drinking is inevitable, and it is safer if it occurs in a controlled, residential setting.

This community tolerance is compounded by the legal obstacles to law enforcement agencies in deterring teen parties. Many States do not prohibit youth possession in private residences (see chapter 3), or permit parents to supply alcohol to their minor

### BEST PRACTICE 13

#### Implement teen party ordinances.

Prohibit teen drinking parties at private residences and impose fines and fees for law enforcement services on homeowners or renters.

children. Police detecting a teen party may not have legal grounds to enter the premises, be unable to confiscate the alcohol, trace its original purchaser, or hold the adult homeowner or renter responsible for allowing the party on the premises.

Communities are experimenting with teen party ordinances to address these problems. For example, the cities of Petaluma, Vallejo, and Santa Rosa, California, have enacted ordinances that

- Prohibit any gathering in a private residence of five or more persons under age 21, at least one of whom possesses alcohol;
- Hold the person responsible for the event (homeowner, organizer, or other person) liable to the city for the cost of police services if a police officer at the scene determines that the gathering is a threat to the public peace, health, safety, or general welfare of the community; and
- Impose a fine on the homeowner or renter who permits such a gathering to occur at his or her residence.

This approach could be augmented by specifying that repeated teen parties at a residence constitute a public nuisance, allowing sanctions to be imposed on this basis.

Some communities, including Minneapolis, Minnesota, have “noisy assembly” ordinances, which can complement teen party ordinances (LaFond et al., 1998). A noisy assembly ordinance prohibits gatherings that disturb the peace, quiet, or repose of neighbors or others during late night hours (e.g., 10:00 p.m. to 7:00 a.m.). This provides law enforcement an additional legal basis for investigating teen parties in private residences.

Recent studies evaluated programs that brought colleges and their surrounding communities together through measures like increased police patrols in problem neighborhoods and efforts to make students more aware of their responsibilities as community residents. Both studies found certain positive effects, including reductions in heavy drinking and student incidents off-campus (DeJong et al. 2009).

### Motel and Hotel Regulations

Motels and hotels are another potential venue for teen parties, which are often held as part of proms and graduation ceremonies. Adults, including parents, rent rooms and provide alcohol for teens as part of the celebration; when the room includes a minibar, the alcohol is already available in the room.

In Michigan, one prosecutor has put hotel and motel owners (as well as limousine rental companies) on notice that they are violating the law against furnishing alcohol to minors if they permit teen parties on their premises or in limousines (*Beverage Industry News*, 1994).

Teen party ordinances can establish clear responsibilities for hotels and motels, requiring them to provide adequate security and holding them liable if they negligently rent rooms for teenage parties. If minibars are permitted, hotels and motels should be required to develop strict monitoring policies, particularly during high school graduation periods.

#### BEST PRACTICE 14

##### **Restrict and monitor teen parties at motels and hotels.**

Develop community programs to insure that teen parties do not occur in hotels and motels; if minibars are permitted, the establishments should be required to strictly monitor their use by young people.

### Alcohol Restrictions at Public Places

Public place restrictions control the availability and use of alcohol in parks, recreation facilities, beaches, parking lots, and other unsupervised locations that are either publicly owned or open to the public. These are favorite arenas for unsupervised teen drinking parties that can lead to serious alcohol problems (e.g., sexual assaults, other forms of violence, drinking and driving, and vandalism).

In response, many communities have banned consumption of alcohol or possession of open containers in unsupervised public locations. Several resort communities in California, for example, have banned or restricted alcohol consumption on public beaches with positive results (Cassady, Flora, & Foote, 1987). Despite early concerns raised by the tourism and alcohol retail industries, the bans have not hurt their businesses. Police report a reduction in law enforcement problems and a change in the composition of beach crowds, with more families and more diversity in age groups (P. Supone, personal communication, October 1998). Drinking bans in public places work best if they cover all public, unsupervised locations except those identified as unlikely sites for youth drinking. (Exceptions for organized gatherings may also be developed, as discussed below.) Communities should tailor the ordinances to their specific circumstances.

Many communities permit organized private gatherings (e.g., weddings, company picnics, or other private parties) to serve alcohol in public recreation areas, a form of availability that parallels alcohol service at public events. If the gathering is private and alcohol is not available for sale, a temporary retail license may not be needed. Recreation departments should require that the organizer obtain a permit before alcohol service is permitted. The departments should determine which facilities shall remain alcohol free and issue permits



that establish guidelines for alcohol service in other cases. Guidelines should include

1. Stipulating no sales or service to minors or intoxicated persons;
2. Requiring trained servers and management policies for large gatherings similar to those recommended for special events (see chapter 1);
3. Providing alternative transportation for those who become intoxicated; and
4. Requiring a security deposit to cover any law enforcement or other costs.

To be effective, alcohol restrictions for public places need to include a vigorous enforcement component.

Communities need to work with law enforcement agencies to identify locations likely to attract youth drinking parties and allocate adequate resources to conduct patrols, particularly during high-risk periods.

#### BEST PRACTICE 15

##### **Establish alcohol restrictions in public locations.**

Prohibit or strictly limit alcohol consumption and open containers in unsupervised public locations such as beaches, parks, parking lots, and recreation facilities. Require hosts who serve alcohol at private functions in these venues to obtain permits that include responsible beverage service guidelines and a refundable deposit to cover any enforcement costs.

Albert Lea is a city of 18,000 in southern Minnesota along the Iowa border. The city is well known as a community that takes underage drinking seriously. Under an enforcing underage drinking laws (EUDL) grant, the city performs routine compliance checks and, in partnership with Freeborn County, started a Zero Adult Provider (ZAP) project, followed up in subsequent years with comprehensive responsible beverage service training and a retailer incentive program.

In the spring of 2008 during an underage drinking town hall forum, citizens expressed the need to do more to prevent underage drinking in homes. Alice Englin, a local coalition coordinator, said that “the meeting attendees were clear that they wanted more done.” After the forum, this encouraged the community to consider a Social Host Ordinance as a strategy. Lieutenants J.D. Carlson and Phil Bartusek did research and presented the concept during a City Council work session. “We listened to the concerns council members had raised about parents away on vacation and how many people constitute a party,” the lieutenants said. They took the concerns seriously, recruited additional partners, and mobilized the county coalition. Englin drafted a letter of support that was signed by coalition members, and the coalition placed an ad in the local newspaper to educate the community about what a social host ordinance is and what it is not.

The Social Host Ordinance, now a reality, was presented to the City Council. The coalition addressed

the council members’ earlier concerns and presented its support letter signed by citizen leaders, community groups, and the school board. On December 8, 2008, the Albert Lea City Council approved the Social Host Ordinance by a vote of four to three.

As of June 11, 2010, Albert Lea is one of 47 cities and 5 counties in Minnesota that have adopted a Social Host Ordinance, and several more are actively considering it. Authorities say the ordinances have been an effective deterrent with several law enforcement agencies reporting a reduction in their calls for service related to underage drinking since the ordinances went into effect. Law enforcement continues to investigate providers of alcohol, and the Social Host Ordinance has filled a gap so that people who host parties are held accountable. The data also indicate the number of illegal consumption arrests in Albert Lea during 2009 was 14 percent lower than the previous 6-year average. Albert Lea Police Lt. J.D. Carlson said he feels that the city’s numbers are down compared to the 6-year average because of the newly implemented Social Host Ordinance.

The story of Albert Lea’s Social Host Ordinance reminds us to continually seek to improve underage drinking prevention efforts, even when we’ve had earlier accomplishments. It also provides an example of the legwork needed and demonstrates how EUDL efforts can grow and be sustained as a result of successful community collaborations.

## Penalties for Violating Noncommercial Availability Restrictions

As discussed in chapter 1, the purpose of penalties, from a public health perspective, is to deter the prohibited behavior. Deterrence requires swift, certain imposition of a significant negative consequence, and the threat of the negative consequence must continue over time. Administrative penalties, the most effective tool for creating a deterrent effect in commercial settings, are not available in noncommercial settings because no license is involved. Criminal penalties may be imposed, but they have the same weaknesses described above: in general, they are neither swift nor certain. Civil liability penalties are also available but should not be the primary deterrent strategy, since civil liability lawsuits are relatively rare events and therefore also tend to be lengthy and unpredictable.

To address these problems, the punishment for noncommercial violations should share many of the same characteristics of administrative penalties. When appropriate, noncriminal fines or fees should be imposed. For example, homeowners or renters who allow teen parties at their residences can be assessed a fee for the cost of the law enforcement response, and beer keg purchasers and private hosts of problematic drinking parties in public locations can lose refundable deposits for violations. Public nuisance ordinances may provide additional avenues for civil penalties imposed on residential or commercial property owners who negligently permit teen parties to occur on their property.

Regulations should permit a range of criminal penalties, depending on the seriousness of the offense. Violations that constitute a first offense that does not involve serious public disruption, large teen parties, or bodily injury should be treated much like traffic tickets—defining the offense as an infraction and imposing a substantial fine and community service, but not necessarily creating a criminal record. To streamline the handling of such violations,

procedures should be established that provide a venue for experimenting with nontraditional forms of punishment (e.g., administered through community boards established by the court system).

Relatively severe criminal penalties should be permitted for serious violations. Prosecutors should have the discretion to impose stiff fines and possible jail terms for supplying alcohol to large teen parties or for individual or group use that results in injuries and serious public disruptions (fights, vandalism, and loud, late night noise), and convictions should lead to a criminal record. Repeat offenders should also face stiffer criminal consequences.

Many States have developed a graduated set of criminal penalties that permits flexibility, but the use of civil penalties and alternative modes of punishment that avoid formal criminal court procedures are rare. Many States are increasing the penalties, but in general they are not addressing the other major criteria for enhancing the deterrent effects of the penalties to be imposed. By relying primarily on formal criminal prosecutions and not increasing enforcement efforts, punishment is unlikely to be either swift or certain (Ross, 1992).

California relies primarily on formal criminal procedures for imposing penalties. Although its shoulder-tap program has provided new emphasis on violations, enforcement remains sporadic across communities and a low priority for most law enforcement agencies and prosecutors. The new penalty for serious violations appropriately increases the range of penalties. However, the relatively severe minimum fine and the reliance on the formal criminal justice system probably lessens the likelihood of prosecution, particularly in cases that do not involve serious community disruption or injury. The vast majority of violations go undetected (c.f. Wagenaar & Wolfson, 1994; Wolfson et al., 1995), and most that are reported probably are not successfully prosecuted (statistics are unavailable). Although a few cities have enacted teen party ordinances, the vast majority have not. In these

instances, the level of deterrence is very low in most communities because the punishment, while relatively severe, is neither certain nor swift. The State legislature has increased penalties, a favored political response to health and safety problems, but it has failed to address the other critical variables in building an effective deterrent strategy.

Several States permit civil liability claims for noncommercial furnishing of alcohol to minors when some sort of serious harm results. Absent homeowners who allow their residence to be used for teen parties may also face liability claims (Mosher, 1999b). Specific provisions regarding who may sue, the required level of proof, and permissible defenses—among other legal issues—vary from State to State. Most States, however, refuse to impose this form of liability on noncommercial suppliers of alcohol, even though a liability determination is consistent with common law

negligence principles and research on commercial civil liability suggests that it will deter alcohol-related traffic crashes. States should therefore expand their civil liability doctrine to include noncommercial servers; it reasonably places part of the burden for causing harm on a negligent party and may reduce youth alcohol problems.

**BEST PRACTICE 16****Apply appropriate penalties to illegal transactions in noncommercial settings.**

Impose civil penalties where applicable; impose a range of criminal penalties and civil liability, either separately or in addition to applicable civil penalties. To increase the penalties' deterrent effects, establish streamlined procedures for imposing sanctions in cases that do not involve serious community disruption, large teen parties, or bodily injury.



# 3

## Minors in Possession of Alcohol

Chapters 1 and 2 describe regulations that target adults who provide alcohol to minors or control locations where youth drinking occurs. A third type of regulation shifts the focus to the minor, imposing sanctions for possession or consumption, with five specific topics:

1. Possession in public and private settings;
2. Consumption before or while driving a motor vehicle (zerotolerance laws);
3. Possession of false identification; and
4. Penalties for violations.

### Restrictions on Possession of Alcohol by Minors

All States prohibit minors from possessing alcohol in at least some circumstances. Most States prohibit minors from possession in public places unless incidental to employment, although many provide exceptions and do not extend the prohibition to private residences. Several States permit public possession if a parent or adult spouse is supervising; a similar requirement sometimes extends to private locations (Inspector General, 1991). For example, New Jersey prohibits a minor from possessing or knowingly consuming any alcoholic beverage “in any school, public conveyance, public place, or place of public assembly, or motor vehicle...” (New Jersey Statutes § 2C:33-15). Nevada prohibits possession “in public” unless a parent, spouse, or legal guardian is present (Nevada Revised Statutes Annotated § 202.020). As noted in chapter 2, some States prohibit adults from supplying alcohol to minors in private residences but permit minors to possess in these venues. Utah holds the reverse: minors are prohibited from possessing in any location, but parents are permitted to furnish alcohol to them (Utah Code Annotated §§ 32A-12-203; 32A-12-209).

As discussed in chapter 1, the private residence exception makes it more difficult for law enforcement to intervene at teen parties. States should make the possession prohibition consistent with provisions affecting adult suppliers: prohibit possession by minors in both private and public settings, with a possible

parental/spouse supervision exception in private residences (Inspector General, 1991; President's Commission, 1993). The exception should apply only to the child or spouse of the adult supervisor.

#### BEST PRACTICE 17

##### **Ban possession by minors in public and private locations.**

Prohibit possession by minors (unless incidental to employment) in public and private locations, with a possible exception in private residences if a parent or spouse is present.

## Zero-Tolerance Laws

All States have enacted zero-tolerance laws, which strictly limit the permissible BAL of any driver under age 21 (Voas, Lange, & Tippetts, 1998). The Federal Government prompted the passage of these special restrictions on youth driving in 1997 by threatening to withhold highway construction funds from any nonconforming State. The permissible BAL ranges from .00 (no drinking in the last hour) to .02 (one drink consumed by a 150-pound man within a 1-hour period). Zero-tolerance legislation brings drinking and driving laws into conformity with minimum age drinking laws and contrasts with adult restrictions, which permit .08 BAL or higher.

Zero-tolerance laws respond to a body of research demonstrating that young drivers already elevated risk of traffic crashes will increase exponentially if they drink even small amounts of alcohol before driving (Hingson, Heeren, & Winter, 1994). Evaluations have confirmed that strict blood alcohol limits for young people reduce their risk of traffic fatalities. (Fell et al., 20009). States with a BAL requirement of .00 have shown greater reductions than States with BAL requirements of .02. Hingson et al. (1994), for example, found a 22-percent decline in alcohol-related fatal crash rates for youth

in States setting .00 as the permissible BAL, a 17-percent decline in States with a level of .02, and a slight increase in comparison States. They estimate that zero-tolerance laws save at least 375 fatal crashes each year among drivers 15-20 years old. Other studies have found similar declines in fatality rates, although specific findings have varied (Zwerling & Jones, 1999).

Many States combine their zero-tolerance laws with administrative license revocation provisions. In California, for example, law enforcement officers may seize the young person's license at the scene of the arrest, which begins a license suspension period of 1 year. The driver may appeal the license suspension in an administrative hearing, which is held separately from any criminal proceedings (Voas et al., 1998). These administrative license revocation provisions increase the potential deterrent effect of zero tolerance laws by increasing both the certainty and the speed of punishment (Voas et al., 1998). They also provide an important additional tool for law enforcement, addressing many of the obstacles officers face in handling young drinking-driver offenders.

Public awareness is a key component in implementing zero-tolerance laws. One study found that the change in the law combined with a vigorous campaign resulted in a 50-percent reduction in alcohol-related crashes among young people (Blomberg, 1993).

#### BEST PRACTICE 18

##### **Implement and enforce zero-tolerance laws.**

Prohibit minors with any measurable BAL from driving a motor vehicle; authorize immediate seizure of the young offender's drivers license at the scene of arrest as part of an administrative license revocation procedure.

## False Identification

Law enforcement officials and retailers report that the use of false identification contributes significantly to underage alcohol access (Inspector General, 1991). Young people can easily obtain false identification by either altering a valid card or purchasing a near-perfect reproduction from firms that specialize in their production. Increasingly, the Internet serves as a source for false identification. Research conducted by Preusser et al. (1997) suggests that young people do commonly carry false identification. Research by Fell et al. (2008) found that states with stricter laws regarding the use of false identification to purchase alcohol had a 7% lower rate of alcohol related traffic fatalities involving underage drinkers.

Despite the prevalence of false identification, young people report that they use them infrequently (Biko Associates, 1998; Grube, 1997; Wagenaar et al., 1993). Instead, they attempt to buy without identification; and if it is requested, they respond that they misplaced it or left it at home. This is frequently a successful strategy and reduces the risk of being apprehended for either an illegal purchase or possessing an illegal identification card. As discussed above, compliance check surveys (which do not use false identification) confirm young peoples' reports: a large percentage of retailers in most communities sell alcohol to minors without inspecting identification cards. Of course, as merchant compliance improves, minors may turn increasingly to false identification as a way of obtaining alcohol.

Most States have imposed strict penalties on the manufacturers of false identification and on minors for possessing or using them. Federal involvement may be necessary to apprehend suppliers of false identification because they frequently operate across State lines (Inspector General, 1991). Many States have enacted statutes that allow a retailer to

### BEST PRACTICE 19

#### **Ban false identification.**

Prohibit the production, distribution, possession, and use of false identification.

confiscate an apparently false identification and hold it for up to 24 hours to allow for law enforcement inspection (California Business & Professions Code § 25659 and Georgia Code § 3-323(I)).

## Penalties Applied to Underage Offenders

Punishment of underage offenders should be based on criteria similar to those outlined for commercial and noncommercial suppliers. The purpose of punishment should be primarily to deter the illegal behavior. Administrative penalties are more certain to be imposed swiftly than criminal sanctions and thus have greater potential for creating a deterrent effect. Administrative revocation of a minor's drivers license under zero-tolerance laws provides an excellent example of this principle. A recent study by Fell et al. (2009) found that zero tolerance laws reduced the rate of fatal crashes involving underage drinkers.

As with noncommercial providers, there are relatively few other opportunities to impose administrative-style penalties on minors for illegal possession of alcohol. Schools typically impose school-based sanctions (e.g., suspension, expulsion) for possessing alcohol on school premises. Some States impose school and drivers license penalties on minors who violate alcohol purchase laws, even if the offense does not occur at school or while driving. Georgia (Georgia Code § 3-3-23.1), for example, mandates a 6-month suspension of the minor's drivers license for a first conviction of attempting to purchase alcohol and a 1-year suspension for subsequent violations.

The primary penalties for minors involve criminal sanctions, usually fines and/or community service with possible mandated education or treatment programs. As with noncommercial servers, this use of criminal sanctions is unlikely to create a deterrent effect because prosecutors and judges do not give the cases priority, and the process involves long delays. Punishment is neither certain nor swift—two key variables in developing an effective deterrence policy. State and local governments should establish procedures similar to those used for traffic and parking infractions to streamline the handling of possession and purchasing cases involving minors, and experiment with nontraditional forms of punishment (e.g., community service imposed by community boards, which are created under the supervision of the court system).

Even with nontraditional forms of punishment, establishing effective deterrence is difficult. Arrest of a minor for violating underage alcohol laws is rare even though violations are so common. A large percentage of young people drink at least occasionally, a significant minority drink both heavily and regularly, and these rates increase steadily with age, beginning in the early teenage years. Wagenaar and Wolfson (1994) estimate that only 2 of every 1,000 occasions of youth drinking result in an arrest. This incidence of detection undermines the law's deterrent effect.

Additional problems arise in penalizing underage drinking. These laws criminalize the majority of young people, which creates the danger of discriminatory enforcement, particularly since both law enforcement personnel and district attorneys consider violations to be a low priority. Some argue that young people use alcohol or tobacco in response to social cues and pressures provided by adult

norms, advertising, etc., and that the purpose of the law is to protect, not punish, young people; therefore, the focus of enforcement should be on the adult suppliers and marketers (for discussion, see Mosher, 1995; Cismoski, 1994).

Because of limited resources, enforcement should concentrate on more serious violations, particularly at teen parties in both private and public settings. If the alcohol purchase or consumption leads to violence, a motor vehicle crash, vandalism, or other crime, the offender can be punished for these aggravated circumstances under the statutes that prohibit the more serious offenses.

Attempts to impose a wider range of more stringent penalties on young people should be resisted because stiffer penalties will have little or no effect. Imposing stiffer penalties provides the appearance of addressing the problem without political fallout but is likely to have no actual preventive impact. Swift and certain penalties will have a greater effect on youth behavior.

#### BEST PRACTICE 20

##### **Apply appropriate penalties to minors in possession.**

Impose administrative license revocation and other administrative and civil penalties where applicable for violations of zero-tolerance laws. Establish streamlined criminal procedures, and experiment with nontraditional forms of punishment. In more serious cases, impose criminal penalties applicable to the crimes committed as a result of youth possession and purchase. Resist proposals to increase the severity of criminal penalties for youth possession or purchase not associated with other crimes.

# 4

## Toward Implementation of Regulatory Strategies

Efforts to implement regulatory strategies to reduce youth access face formidable barriers. First, alcohol retailers and other commercial interests often generate significant political opposition to many interventions. Second, law enforcement agencies, faced with shrinking resources and increased demands for services addressing other social problems, consider youth access to alcohol a low priority and perceive a general acceptance of youth drinking by many segments of their communities (Wolfson et al., 1995). Third, in many jurisdictions, the respective roles of State and local governments are confused, making effective collaboration difficult or impossible. Finally—and perhaps most importantly—regulatory action must occur in the context of a comprehensive community program that focuses on changing community norms and expectations. Regulatory interventions will be difficult or impossible to maintain over time and will fall short of their desired impact if this community context is not developed as part of the implementation process.

The publication of the 2004 Institute of Medicine report, *Reducing Underage Drinking: A Collective Responsibility* (IOM 2004) and *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking* (U.S. DHHS 2007) raised awareness once again concerning the issue of underage drinking. These document and companion *Guides to Action* drew attention to the widespread problems associated with underage drinking. Considerable recent publicity has also focused on the problem of binge and heavy drinking among college students and the tragic consequences of these behaviors

The important task is to organize awareness and desire for action and translate it into effective policy development. This chapter briefly addresses four issues critical to building a grassroots voice and implementing the regulatory proposals described in the previous three chapters:

1. Establishing enforcement priorities;
2. Determining the roles of State and local governments;
3. Encouraging youth participation and activism; and
4. Developing complementary prevention policies and programs.

## Enforcement Priorities

Establishing enforcement priorities is a crucial step in reducing youth access to alcohol. Previous chapters have described the key elements of deterrence—the importance of imposing a significant penalty in a process that is perceived to be both certain and swift. Enforcement is therefore a key component in any deterrence-based strategy; without it, a community perception will emerge that there is no risk of punishment.

Law enforcement agencies have limited resources and must constantly respond to competing demands. Therefore, communities need to advocate for increased resources to address youth alcohol problems, and they also need to develop a clear set of priorities to ensure that the available resources are efficiently used to achieve desired results. Three primary criteria should be used:

1. Does the policy address high-risk settings or activities associated with serious harm?
2. Is there good probability that the policy will be effective if enforced (i.e., it will deter the unwanted behavior)?
3. Can the policy be enforced efficiently?

Community circumstances will influence the most effective mix of law enforcement activities. The following set of priorities establishes general guidelines or principles for implementing regulatory policies, based on the scientific literature and the analyses in previous sections. Each community can adjust them to meet its particular needs, problems, and conditions, translating them into specific law enforcement actions.

### **Priority #1: Routine, ongoing compliance checks.**

The first step in shifting community norms and expectations is to demand that commercial alcohol vendors take all reasonable steps to prevent sales to minors. As discussed above, compliance checks are both effective and efficient and can be funded through fines or modest increases in license fees.

### **Priority #2: Teen parties in both public and private settings.**

Effective enforcement of regulations targeting noncommercial providers and settings for youth alcohol consumption requires substantial resources. Yet because of the potential for harm, it represents a high priority for action. Given limited resources, priority should be given to enacting teen party ordinances and deterring those teen parties that pose a significant threat to community health and safety. There should be regular patrols of likely drinking locations on Friday and Saturday nights. Communities should incorporate neighborhood watch and other neighborhood groups into the process, to quickly alert police when there is evidence of teen parties in private residences. Parks and recreation departments should also assist in identifying potential party locations.

### **Priority #3: Adult suppliers of teen parties.**

When teen parties are discovered, a high priority should be placed on penalizing adult suppliers and enablers. This priority requires substantial resources, vigilance, and persistence to be effective, but major dividends are realized. The goal is to send a clear message to the community that adult involvement in large teen parties is unacceptable, and any adult who assists or permits large teen parties will face a substantial penalty. Keg licensing ordinances provide an important enforcement tool to meet this goal.

### **Priority #4: Zero-tolerance laws.**

Zero-tolerance laws meet two of the three criteria for establishing priorities by effectively addressing a substantial community harm. Enforcement may require substantial resources, although it can be incorporated into other community programs to deter drinking driving.

### **Priority #5: Commercial licensing restrictions.**

These restrictions complement compliance checks, reduce youth access, create a healthy commercial climate for alcohol sales, and are probably the easiest to enforce using minimal law enforcement resources. For example, restricting the density and location of alcohol outlets is primarily a licensing function with little or no law enforcement involved.



Periodic visits that can be combined with the compliance-check program will reveal whether alcohol retailers are obeying minimum server age, keg registration, home delivery, and mandatory responsible beverage service laws; and restricting minors' access to bars and nightclubs. It is also easy to monitor special events planners for illegal alcohol sales and license restriction infractions.

**Priority #6: Enforce laws against use or manufacture of false identification.** Research indicates that laws against use and manufacture of false identification are effective in reducing the rate of fatal crashes among underage drinkers.

**Priority #7: Shoulder-tap programs.** Because of their expense, programs that target adult strangers who purchase alcohol for minors should be limited to locations reported as notorious sites for youth purchases. It is important to note that vigorous publicity associated with any enforcement action can magnify its deterrent effect. Therefore, news coverage of campaigns should be planned and encouraged. These priorities represent a significant shift from current practice. Wagenaar and Wolfson (1994) found that prosecuting any violations of youth access laws is rare; and when the laws are enforced, minors are most likely to be the target. Only 2 of every 1,000 occasions of illegal drinking by youth result in an arrest, and only 5 of every 100,000 youth drinking occasions result in an administrative action against an alcohol outlet. Arrests of noncommercial suppliers of alcohol are even more rare.

#### IMPLEMENTATION PRINCIPLE 1

##### Set policy and enforcement priorities.

Establish seven priorities for enforcement in the following order:

1. Routine, ongoing compliance checks.
2. Teen parties in both public and private settings.
3. Adult suppliers of teen parties.
4. Zero-tolerance laws.
5. Commercial licensing restrictions.
6. Use and manufacture of false identification
7. Shoulder-tap programs.

## The Role of State and Local Governments

State and local governments play critical roles in developing, implementing, and enforcing youth access regulations. States determine the extent of local authority, which varies widely. Gorovitz, Mosher, & Pertschuk (1998) describe four distinct approaches that States use to regulate retail sales of alcohol:

1. Prohibition of local control in virtually any circumstance;
2. Allocation of primary responsibility for retail regulation to the State, but permitting limited local control through land use powers;
3. Concurrent control, with the State providing basic standards, but permitting the localities to establish stricter controls provided they do not contradict State provisions; and
4. Allocation by States of primary control to local governments, with only minimal State standards.

States in the first two categories use the *State preemption doctrine*, which provides that the State does not allow, or preempts, local control in at least some circumstances. Its rationale is the need for consistency across local jurisdictions. In some instances, a patchwork of local regulations unnecessarily burdens or confuses intrastate and interstate commerce and relations. The doctrine should not be applied to youth alcohol access regulations, however, because of the need to tailor the regulations to local circumstances and needs. The fourth approach, primary local control, is also inadvisable: in many cases, statewide standards are critical in order to avoid competitive practices between localities. For example, cities with keg registration ordinances may request statewide regulation so that young people do not simply go to nearby cities where the ordinances are not in place.

Many States have already established the most effective structure for aligning State and local youth access regulations—concurrent jurisdiction. In this case, the State establishes basic standards for each of

the recommended policies, to which all communities must adhere. Communities are given leeway to adapt the basic policies to local circumstances. They may set stricter standards but are not permitted to adopt less stringent ones. Most States that employ this system require both local and State licenses, and retailers must adhere to both licensing standards.

The State preemption doctrine has become a contentious issue in alcohol, tobacco, and firearms control. The three affected industries and their supporters lobby for it as a strategy to undermine local control; they can more easily and effectively influence State legislatures. Industry recommendations for State preemption may undermine public health goals, and local communities may lose their authority to develop new, innovative programs. Innovations in these policy arenas almost always emanate from local grassroots campaigns that eventually lead to Statewide action. State standards are critical, but they should not be developed at the expense of local authority (for discussion, see Gorovitz et al., 1998).

A related priority is developing effective partnerships between State and local law enforcement agencies. This usually involves State alcoholic beverage control agencies or liquor boards and local police and sheriffs' departments. State agencies can provide technical assistance, resources, and coordination of areawide activities; they may also have special authority to investigate and prosecute violations of State law. Local law enforcement is in the best position to ascertain local needs and priorities and determine the best use of States' resources and assistance.

## IMPLEMENTATION PRINCIPLE 2

### **Clarify the roles of State and local governments.**

Adopt concurrent State and local authority to establish and enforce youth access regulations, and avoid the State preemption doctrine. Promote partnerships between State and local agencies responsible for implementing and enforcing the regulations.

Citizen activism is central to the implementation process and provides an important new direction in youth prevention programs. Community prevention initiatives traditionally place youth in a passive role, imparting educational messages and standards and expecting them to respond rationally and responsibly. Many health educators now challenge this view. Young people receive far more powerful educational messages from the community and societal environment through advertising and marketing messages, community alcohol policies, and adult attitudes and behaviors. Young people are acutely aware of the mixed messages in the community and recognize that adults are often telling them to "do as I say, not as I do" (Wallack, 1985).

Implementing youth access regulations provides an opportunity to engage young people and challenge them to participate in analyzing and resolving society's mixed messages regarding youth alcohol practices. Young people are in the best position to communicate to policymakers and others the effect of adult attitudes and behaviors. They experience directly the contradiction between ready alcohol access and aggressive alcohol marketing on the one hand and the health and safety messages and strict no-use policies on the other. Youth participation can include studying and reporting marketing abuses; developing counter advertising; participating in law enforcement programs; and meeting with and making presentations to policymakers, retailers, and marketers. Schools, parents, government agencies, law enforcement, community coalitions, and neighborhood groups should create avenues for engaging young people in this manner (for discussion, see Mosher, 1998).

The Vallejo, California, Fighting Back project's alcohol policy coalition provides an interesting model for building youth participation. Young people

- Serve as decoys in alcohol and tobacco compliance checks conducted by city police;
- Advocate for youth safe zones by assessing the layout and advertising practices of alcohol outlets and meeting with store owners and managers;



- Work with police to determine whether alcohol outlets are obeying a local ordinance limiting the amount of advertising on outdoor windows;
- Receive public speaking training, and address both youth and adult audiences, including policymaking bodies, about alcohol policy concerns;
- Participate in neighborhood cleanup efforts designed to reduce alcohol and illegal drug violence;
- Participate in a ride-along project with DUI police patrols;
- Plan and participate in media advocacy campaigns;
- Create alcohol and tobacco counter advertising; and
- Monitor alcohol and tobacco advertising in magazines, and send messages to magazine editors urging responsible advertising practices.

A key to the program's success is its respect toward young people and its reliance on their creativity, ideas, and enthusiasm. Many students have continued their involvement beyond the original 6- to 9-month internship and view the program as a unique opportunity to build writing, public speaking, media, and organizing skills (G. Vasquez, personal communication, April 1999).

### IMPLEMENTATION PRINCIPLE 3

#### **Foster youth participation and activism.**

Create opportunities for youth involvement and leadership in developing, implementing, and enforcing youth access regulations, working with schools, parents, alcohol policy coalitions, government agencies, and other community institutions and members.

## Complementary Prevention Policies and Programs

Youth alcohol access regulations are only one aspect of a comprehensive community prevention strategy. Their potential for reducing youth alcohol problems will be greatly enhanced in community environments that deglamorize alcohol use, provide alcohol-free activities, send clear messages regarding risks associated with alcohol, offer easy access to recovery services for all ages, and include reasonable regulations that generally target alcohol availability. Alcohol taxation is a particularly important complementary strategy.

Research shows that young people are sensitive to price increases; even modest tax increases will significantly reduce the rates of heavy drinking and traffic crashes involving youth (Laixuthai & Chaloupka, 1993).

As discussed above, implementing prevention policies requires an informed, active citizenry. This community mobilization can be achieved through various tactics that should become part of public health's basic toolkit. Community organizing builds grassroots participation, mobilization, and leadership. Media advocacy engages community members, increasing the deterrent effect of enforcement programs and building support among policymakers; policy advocacy brings citizens to the policymakers' tables (for discussion, see Holder et al., 1997; Mosher, 1999a).



# Conclusion

The regulatory strategies outlined in this guide cannot be viewed in isolation. Their success and continuation can be assured only by building a foundation of community participation and activism and developing complementary policies and programs designed to shift community norms and expectations. This is a worthy goal that builds community collaboration and provides participants with a sense of accomplishment in both process and outcomes. The stakes are enormous: the safety and health of our young people—the heart of our country's future.



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11720 Beltsville Drive, Suite 900  
Calverton, MD 20705-3102  
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**2021 SENATE JUDICIARY**

**HB 1184**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

HB 1184  
3/3/2021

A BILL for an Act to amend and reenact subsection 3 of section 5-02-06 of the North Dakota Century Code, relating to prohibitions for an individual under twenty-one years of age; and to provide a penalty.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson.** [3:30]

### Discussion Topics:

- Dining for underage citizens
- Parent or Guardian privileges

**Rudie Martinson**, North Dakota Hospitality Association Provided Testimony in Favor [3:30]

**Senator Myrdal** Moved a DO PASS

**Senator Heitkamp** Seconded the motion

Vote Passed 5-2-0

**Senator Myrdal** Carried the bill

DO PASS ON HB 1184	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	N
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	N
Senator Janne Myrdal	Y

Hearing Adjourned [3:53]

*Jamal Omar, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1184: Judiciary Committee (Sen. Larson, Chairman)** recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1184 was placed on the Fourteenth order on the calendar.