

**Analysis of strategies designed to reduce sales of alcohol and
tobacco to underage persons**

A preliminary report

Prepared for the
Alaska Alcoholic Beverage Control Board

by

Marny Rivera, Ph.D.

Khristy Parker, B.A.

JC 1202

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Executive Summary

This study was requested by the Alaska Alcoholic Beverage Control Board (ABC) which is responsible for enforcing age-of-sale laws. The purpose of the study was to identify ways enforcement practices for alcohol could be modified to achieve higher rates of compliance as are seen in tobacco enforcement.

Following are the key findings.

Key Findings

Consumption:

- Even though Alaska and the U.S. have both seen decreases in adolescent use of alcohol, Alaska has seen larger decreases overall.
- Youth consumption of alcohol and tobacco in Alaska has consistently decreased since 1995.
- Twice as many youth in Alaska self-reported recent alcohol use as reported recent cigarette use. Due to higher youth prevalence rates, controlling underage access to alcohol poses more difficulties than controlling underage access to tobacco.
- Adolescent use of tobacco has been declining consistently, both statewide and nationally. Due to the lack of data for 2011 for the U.S., it is impossible to determine how Alaska compares to national data for the same time. However, based on 2009 data, Alaska has a lower rate of tobacco use than the country as a whole.
- Adult consumption of alcohol in Alaska declined from 2001 until 2008 when it began to increase. Nationwide, adult alcohol consumption has consistently declined since 2001.
- Two to three times as many adults in Alaska consume alcohol as smoke tobacco on a regular basis. As a result of higher adult prevalence rates, youth access to alcohol is likely greater than youth access to tobacco.
- In Alaska, adult consumption of tobacco has consistently decreased since 2001.
- Fewer people are starting to smoke, and those who smoke cigarettes are smoking less regularly.

Compliance Checks:

- Effective compliance checks and enforcement of laws can reduce sales of age-restricted products to minors and are associated with reductions in use of such dangerous substances.
- Compliance checks are a retail enforcement strategy that should be conducted as part of a multi-pronged effort to reduce underage drinking.
- Communication efforts (i.e., via media) to merchants and the community should take place in conjunction with compliance checks.
- Conducting at least two compliance checks per year at all outlets is associated with increased compliance.

- Mandatory photo identification checks at point of purchase for all alcohol sales, and using tools like electronic verification techniques, reduces the likelihood that alcohol will be sold to underage persons.
- Rewards for compliant employees or retail outlets have been associated with increased compliance.
- Ongoing merchant training and education is preferable to one-time training for agents and employees, especially in establishments where alcohol has been sold to underage persons.
- Rates of compliance and violation cannot safely be compared across locations or substances due to differences in compliance checking procedures and computation of results.

Sanctions:

- Graduated sanctions of increasing severity for multiple violations of age of sales laws can deter licensees and their agents and employees from selling alcohol to underage persons.
- Civil penalties are faster, easier, and cheaper to administer than criminal penalties since they do not require prosecution through the court system.
- Civil penalties including license suspensions and fines against licensees can be used in addition to, or instead of, sanctions against individual agents or employees.
- Penalizing licensees for sales of dangerous products to underage persons is more likely to lead to policy and practice changes in hiring, training, and supervision that reduce alcohol sales to minors.

Funding and Resources:

- State statutes are designed to deter sales of alcohol to underage persons by stringently sanctioning violators of this law. Certainty of sanctions is a key element of deterrence.
- State statutes allow for license suspensions and civil financial penalties against licensees whether they or their agents or employees sell alcohol to underage persons. Deterring sales of alcohol to underage persons necessarily requires implementing stringent sanctions not just having them written into law.
- Adequate state funding of compliance checking and other enforcement is essential in order to effectively reduce sales of alcohol to underage persons.
- Food and Drug Administration (FDA) regulations have led to substantially greater federal funding for tobacco enforcement efforts since 1998. Alcohol enforcement efforts have not, and do not, receive the same level of federal funding. The Synar Amendment creates significant motivation to reduce sales of tobacco to underage persons through the risk of losing block grant funding if minimum noncompliance rates are not achieved.
- Licensing fees and financial penalties for violations can be used to fund compliance checks and merchant education efforts.
- Limited resources necessitate effective partnerships with agencies or organization that have a shared desire to reduce underage access to and use of dangerous substances.
- Expanding and building on current partnerships can assist in prevention efforts.

- Partnerships can include federal or state agencies, national non-profit organizations, and local coalitions, among others.
- Partnerships may provide volunteer personnel or staff, educational materials or efforts for merchants, community, and youth, and other resources like funding.

Taxes:

- Alcohol taxes have not kept pace with inflation, resulting in a missed opportunity for funding of important alcohol control policies.
- Higher state alcohol excise taxes reduce consumption, especially by those with less disposable income (i.e., teens) and provide a funding source for prevention and intervention programs within the state.

Key Recommendations:

Based on a careful review of existing literature, Alaska statutes, compliance check practices, sanctions data, and other resources, recommendations are provided for improving compliance with alcohol age-of-sale laws in Alaska. Recommendations are made in the following areas:

- Improving enforcement efforts.
- Enhancing funding and resources for merchant education and compliance check enforcement efforts.
- Developing a multi-pronged underage drinking reduction strategy.
- Collecting data and evaluating enforcement efforts.

See Recommendations and Conclusions starting on page 28 for a complete list of recommendations.

ago. In order to adjust alcohol prices to match inflation, taxes would need to be increased by a factor of three on beer to match 1960 values (Institute of Medicine, 2004).

Evidence-based research indicates that increasing the price of alcohol is an effective method to prevent underage drinking. Underage drinking is more responsive to price increases because youth have less discretionary income and purchase alcohol at package stores, rather than at bars and restaurants (Institute of Medicine, 2004).

Tobacco

Alaska receives more than \$100 million in annual revenue from tobacco sources: approximately \$75 million in tobacco tax revenue and another \$32 million in MSA payments. The Tobacco Use Education and Cessation Fund was created to receive a small portion of the state's tobacco-derived funds annually, which are then available for appropriation to support tobacco prevention efforts. (Alaska Department of Health and Social Services, 2009)

In Alaska, 76 cents of every dollar of cigarette tax revenue goes to the "School Fund" used for schools. The rest goes to the general fund. Nine percent of revenue is directed into the Tobacco Use Education and Cessation Fund which finances the state's tobacco control and prevention programs (American Lung Association, 2011).

Recommendations and Conclusions

Enforcement Efforts

Alaska already has statutory penalties sufficient to deter licensees from noncompliance. The ABC Board has the authority and discretion to impose penalties for noncompliance. Even though the ABC Board has the tools it needs to effectively regulate the sale of alcohol to underage buyers, it appears that changes to the methods used to enforce alcohol control laws are needed to help reduce underage alcohol use. We recommend the following:

- Amend ABC Board regulations to implement a penalty structure, including mandatory license suspensions and revocations and mandatory fines. The penalty structure should have graduated sanctions of increasing severity for multiple violations of age-of-sale laws.
- Amend ABC Board regulations to specify aggravating and mitigating circumstances and how they affect penalties.
- Hold the licensees responsible for all activities under the license: hold licensees responsible for the actions of their employees, not just their own personal actions. This will encourage more thorough training and law-abiding policies at the point of sale.
- Impose sanctions that are in line with the statutory penalty structure to promote consistency.
- Strengthen enforcement efforts by conducting more than one compliance check every six months at each licensed location in the state. If licensees do not know how many

compliance checks they may be subject to in any given time period, they will be less complacent about compliance.

- Pair compliance checks with communication efforts (i.e., via media) to merchants and the community.
- Provide rewards for compliant employees or retail outlets, since such rewards have been associated with increased compliance.
- Require identification checks for everyone purchasing alcohol – do not make the agent or employee attempt to ascertain age. Consider electronic techniques (i.e., Real ID/magnetic strip reader).
- Conduct compliance checks as part of a multi-pronged effort to reduce underage drinking.

Funding and Resources

It is important that funding and resources to the ABC Board be set at a level to allow for increased enforcement efforts. We recommend the following strategies to achieve the necessary funding:

- Increase the cost of licensing, or require yearly (rather than biennial) licensing. Increasing the license fees would create additional funding for ongoing merchant education and enforcement efforts.
- Increase excise taxes on alcohol to keep pace with inflation, and provide a funding resource.

Multi-pronged Strategy

Reducing underage access to alcohol requires a multi-pronged strategy and participation by a variety of entities.

- Develop and implement a program similar to the tobacco model, that is an adequately funded, coordinated, and multi-pronged underage alcohol prevention and intervention plan for the State of Alaska to reduce underage drinking.
- Utilize the effective strategies that are part of Alaska's Comprehensive Tobacco Prevention Plan.
- Fund a multi-pronged strategy through increased taxation, license fees, licensee penalties, and other sources.

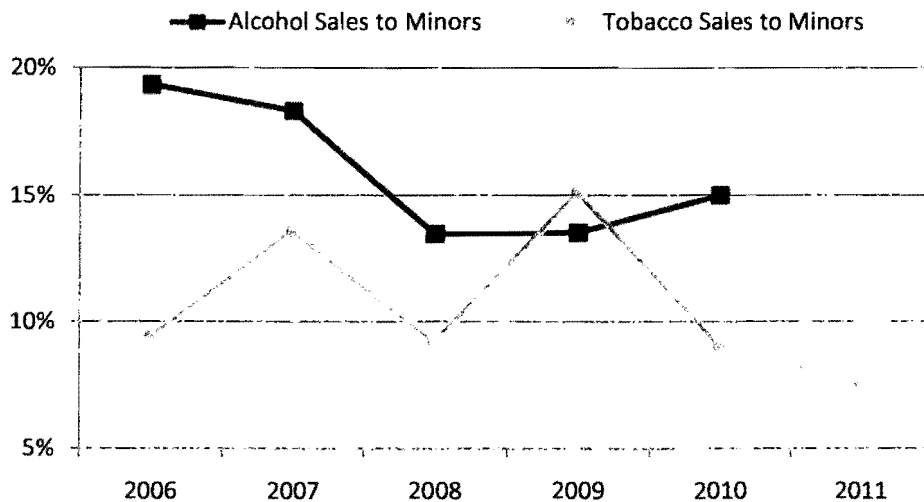
Data and Evaluation

- Collect and report data on compliance and violation rates, repeat violators, case dispositions, and criminal and civil sanctions for violation of alcohol age-of-sale laws.
- Evaluate alcoholic beverage control and enforcement efforts for the State of Alaska.

Alaska Alcohol vs. Tobacco Sales to Minors

SFY2006 - 2011

| SFY | Alcohol Sales to Minors | | | Tobacco Sales to Minors * |
|------|-------------------------|---------|------------------------|---------------------------|
| | A | B | C | |
| | # Vendor Checks | # Sales | Violation Rate (B / A) | |
| 2006 | 874 | 169 | 19.3% | 9.4% |
| 2007 | 1,037 | 190 | 18.3% | 13.6% |
| 2008 | 609 | 82 | 13.5% | 9.2% |
| 2009 | 614 | 83 | 13.5% | 15.1% |
| 2010 | 700 | 105 | 15.0% | 9.0% |
| 2011 | n/a | n/a | | 7.6% |



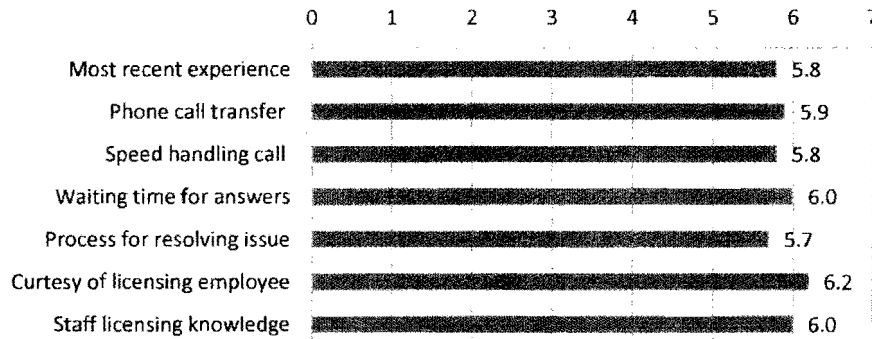
* Alaska tobacco sales to minors are represented by the Synar Retailer Violation Rate (RVR). (The federal Synar Amendment requires states to conduct investigations related to the sale of tobacco to minors.)

Synar investigations cross state fiscal years. For instance, the 2011 RVR reflects investigations conducted between June 1 and September 30, 2010. The 2011 RVR is provisional, pending federal approval.

**ABC Board
2011 Licensee Survey***

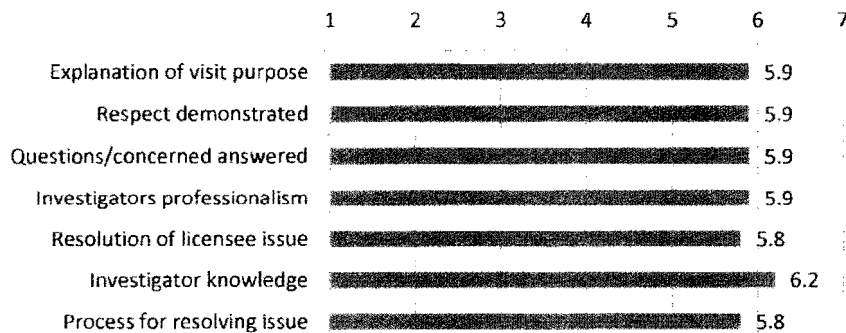
Satisfaction with Licensing Process & Staff

Rate the following: 1 = Very Poor, 7 = Superior



Satisfaction with Enforcement Process & Staff

Rate the following: 1 = Very Poor, 7 = Superior



*Data captured from 257 anonymous responses to the survey from licensees.

Crackdown on bar drinking is law enforcement excess***Was recent police liquor enforcement detail downtown justified?***

DARWIN A. BIWER JR.

(02/15/12 19:03:01)

In an ADN article last month ("Police crackdown on bar drunkenness, Jan. 9) I, among others, was quoted about my reaction to several Anchorage Police Department (APD) arrests for "Drunk on Premise" violations.

That article set off a firestorm of reactions. The public was generally appalled at the APD behavior. In the electronic version of the ADN article there were well over 600 comments, with more still being added, most agreeing with my assertions. A TV station, viewed statewide, sent a film crew all the way to Girdwood (an hour's drive) to personally interview me. I also received a call from ABC News' national headquarters in New York about Anchorage's problem cops. Subsequently, a reporter from the Alaska Public Radio station called as did a local talk show host.

I believe that the police actions and the reasons behind the public outcry are because the police behavior has never been accurately disclosed. Only the police version has previously been aired. The plight of law-abiding bar owners being targeted for persecution is finally being exposed.

Title 4, the Alaska Statutes and Regulations that govern alcohol consumption, make it illegal to be drunk on a liquor licensed property. There is no statute about "over serving" a patron. The reason being that it is a subjective judgment on the part of the observer as to whether a person is "visibly impaired."

Stumbling, fumbling with money or even vomiting are not necessarily signs of "over serving." A sprained ankle or knee, forgetting one's glasses, nervousness or food poisoning can induce nausea.

Cops who enter an establishment to observe drinking behavior are not as qualified as TAP (Teaching Alcohol Professionals) trained servers. First off, cops get little or no training in enforcing Title 4. No police attend CHARR's four-hour TAP classes that are mandatory in Alaska for all servers of alcohol.

APD is only interested in making arrests without regard to whether it's a "good" arrest that will hold up in court. The more arrests the better. This action is to convince the public that the cops are doing their job and earning their overtime.

The number of arrests is very different from the number of convictions.

Especially important to APD is to give the public the impression that bars are hotbeds of criminal activity by not following liquor laws. It puts the blame on bars for violent crimes. In actuality, violent crimes occur primarily in private residences where persons are drinking without the benefit of the trained supervision as found in bars.

Alaska is recognized as among the best in the nation in the reduction of DUI arrests and prohibiting underage persons from obtaining alcohol from liquor licensees. And yet we are still accused of being irresponsible servers. From the opening of any bar until the closing minute, bartenders and

servers are the sole enforcers of liquor laws. There are no APD cops during the day, during the week or any time during the rest of the year unless specifically called by the establishment.

The recent sweep of 26 bars, where 20 were perfectly in compliance, resulted in 20 arrests of patrons and four of servers. We definitely will find out if the courts will uphold the officer's judgment on who may or may not be over served.

Darwin A. Biwer Jr. is the owner of the downtown bar Darwin's Theory and board chairman of the Alaska Cabaret, Hotel, Restaurant and Retailers Association (CHARR).

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Effort to reduce drunken driving deaths is succeeding

Was recent police liquor enforcement detail downtown justified?

MARK MEW

(02/16/12 07:40:38)

News that the Anchorage Police Department has been conducting a liquor enforcement detail downtown has generated a lot of public interest. Comments suggest there are some common misconceptions about the nature of such details, how and why they are conducted, and what are APD's motives. I would like to clarify some facts, and also talk about our rationale for engaging in these activities.

Title 4 of the Alaska Statutes and Title 10 of the Anchorage Municipal Code are the laws books for decades. Many people are expressing surprise to learn that it is illegal for a drunken person to knowingly remain on a licensed premise, and that it is illegal for an employee of the establishment to -- with criminal negligence -- serve a drunken person.

APD has conducted periodic enforcement operations in bars and other establishments for as long as any of us at APD can remember. Typically, we do them when circumstances indicate a particular need. For example, officers may notice that a lot of OUI arrests originate at a particular bar or establishment. So, it makes sense for officers to check on that establishment and make sure they are not serving alcohol to people already badly impaired. Operations are generally of short duration. Sometimes we announce them in advance; sometimes we make surprise visits. In this last instance, we announced our intentions to the media twice.

The definition of "drunken person" we use for purposes of over service cases comes from Title 4. This is the same definition that the servers learn when they pursue their professional certification. Such a "drunken person" is nearly always significantly more intoxicated than the .08 "per se" limit for drunk driving with which most people are familiar. One should not confuse the two legal standards. They are different.

It's also worth noting that most establishments serving alcohol in Anchorage are doing a responsible job; during the recent effort, the vast majority of the downtown bars were found to be serving legally. Twenty of 26 bars checked were free from violations. The violators, however, were found to be serving alcohol to persons who were clearly inebriated, as evidenced by vomiting or falling off bar stools, for example. This is not a practice most communities want to accept or encourage by looking the other way.

It is no secret that Anchorage's rates for reported domestic violence and sexual assault are among the nation's highest. We are trying very hard at present to reverse this devastating statistic, and cracking down on establishments that promote extreme intoxication are part of that effort. Many of our sexual assaults occur downtown, or result from a meeting of victim and perpetrator downtown. A lot of alcohol is served downtown. It is true that suppressing over use of alcohol downtown won't of itself solve the DV and rape problems, but it can sure put a dent in both. Doing so is one part of our adopted strategy to combat interpersonal violence.

We recently announced our "Zero for Twelve" traffic enforcement campaign (a project different from but related to the aforementioned bar effort). Ten years ago, there were 20 alcohol-related fatal traffic collisions in Anchorage. In 2011, there were three. Our goal for 2012 is none -- zero. At

a press conference in December, we mentioned the proliferation of bars downtown, and warned that downtown would get a fair amount of attention. We said then -- and I reiterate now -- that addressing over service in bars has a supporting role in the anti-drunk driving effort.

Everybody wants to enjoy Anchorage's vibrant downtown district. There are celebrations, displays and performances of the arts, shopping, fine dining, and -- yes -- great spirits. But the pursuit of happiness does not extend to the destruction of lives. When it comes to alcohol, most people understand where the line is between fun and potential tragedy.

Mark Mew has served as chief of the Anchorage Police Department since 2009.

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