

HB

1 16

SENATE COMMITTEE REPORT

DATE: 4/15/05

FURTHER:

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 116(JUD)

HB 116 LIABILITY FOR ALCOHOL LAW VIOLATIONS

"An Act relating to the liability of certain persons for certain violations of alcoholic beverages laws."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

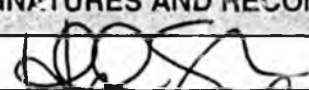

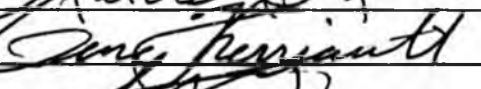
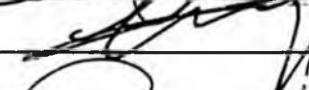
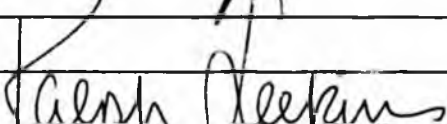
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
			X	
	✓			
	✓			
	✓			
CHAIR: 	✓			



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

House Bill 116

“An Act relating to the liability of certain persons for entry and remaining on licensed premises.”

Volunteers under the age of 21 cooperate with law enforcement officials in investigating and enforcing compliance with the state's alcoholic beverage laws. Under current statutes, persons under 21 years of age can be sued by license holders for up to \$1000 for being on the premises. No exemption exists in the law for young people working with law enforcement officials. Recently a liquor license holder sued a volunteer, who was cooperating in an active investigation.

House Bill 116 creates an exception to AS 04.16.049 and .060 to protect young volunteers cooperating with law enforcement from retributive action and liability. Keeping alcoholic beverages out of the hands of people under 21 years of age is a cooperative effort. Young people working with law enforcement should not be subjected to lawsuits for participating in an investigation.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

April 26, 2005

SUBJECT: Retroactivity and SCS CSHB 116()
(Work Order No. 24-LS0379A)

TO: Representative Kevin Meyer
Attn: Mike

FROM: Gerald P. Luckhaupt 
Legislative Counsel

Enclosed is the SCS() you requested. I have one comment. I am more than a little skeptical that the courts will accept the retroactive application of this bill to invalidate valid, existing rights as of the effective date of the Act.

A 'retrospective' or 'retroactive' law is generally defined as a law which 'takes away or impairs vested rights acquired under existing laws, or creates new obligations, imposes a new duty or attaches a new disability in respect to transactions or considerations already past.'

Underwood v. State, 881 P.2d 322 (Alaska 1994).¹ Whether a particular provision may be applied retroactively in other than a purely procedural context without violating the Constitution is a complex issue. It seems clear that this bill has more than a purely procedural reach.

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05-310.med

Enclosure

¹ In *Underwood* the court further explained that "a statutory change which merely disappoints economic expectations and does not affect vested rights is not an ex post facto law" and cited *Property Owners Ass'n v. City of Keetchikan*, 781 P.2d 567, 574 n.12 (Alaska 1989) for that proposition.

24-LS0379J
Luckhaupt
4/26/05

**SENATE CS FOR CS FOR HOUSE BILL NO. 116()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVES MEYER, Gara

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the liability of certain persons for certain violations of alcoholic**
2 **beverages laws; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1.** AS 04.16.049 is amended by adding a new subsection to read:

5 (f) A person under 21 years of age does not violate this section if the person
6 enters or remains on premises licensed under this title at the request of a peace officer,
7 if the peace officer accompanies, supervises, or otherwise observes the person's entry
8 or remaining on premises, and the purpose for the entry or remaining on premises is to
9 assist in the enforcement of this section.

10 *** Sec. 2.** AS 04.16.060 is amended by adding a new subsection to read:

11 (f) A person does not violate this section if the person performs an act
12 proscribed under this section, the person performs that act at the request of a peace
13 officer, the peace officer accompanies, supervises, or otherwise observes the person's
14 act, and the purpose of the act is to assist in the enforcement of this section.

1 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
2 read:

3 RETROACTIVITY. (a) Section 1 of this Act is retroactive to October 1, 2001.

4 (b) Section 2 of this Act is retroactive to September 27, 2004.

5 * Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 116(STA)
 (H) Publish Date: 3/2/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Minors On Licnsed Premises RDU Statewide Support
 Component Alcoholic Beverage Control Board
 Sponsor Representative Meyer ABC Board
 Requester House State Affairs Component No. 2690

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will aid the Alcoholic Beverage Control Board and law enforcement agencies that conduct compliance checks and other investigations to reduce underage access to alcohol.

Prepared by: Douglas B. Griffin, Director Phone 269-0350
 Division Alcoholic Beverage Control Board Date/Time 2/28/05 10:12 AM
 Approved by: Commissioner William Tandeske Date 2/28/2005
 Agency Department of Public Safety



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 25, 2005
TO: Representative Paul Seaton
FROM: Mike Pawlowski
RE: Sectional Analysis for CSHB 116
(Version No. 24 – LS0379\G)

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

- Section 1.** Creates an exemption from the liability specified in AS 04.16.049(e) for persons under 21 years of age assisting a peace officer in the enforcement of AS 04.16.049.
- Section 2.** Clarifies that a person cooperating with law enforcement does not violate AS 04.16.060.

Changes to HB 116 in CS HB 116 version 24-LS 0379\Y

HB 116

CSHB 116

- Section 1 & 2: Added "supervises" and deleted "the person" to line 7 in section 1 and line 13 in section 2: "if the peace officer accompanies, supervises, or otherwise observes the person's entry."

Changes to HB 116 in CS HB 116 version 24-LS 0379\G

HB 116

CSHB 116

- Page 1, line 10-14:
Adds a new section clarifying that a person does not violate the provisions of 04.16.060 if they perform the act at the request of a peace officer with certain provisions.

Rationale:

Persons are subject to civil liability for violations of both AS 04.16.049, and AS 04.16.060. The addition to HB 116 protects volunteers from civil liability under both provisions.



MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

February 8, 2005

Re: HB 116

Dear Representative Meyer,

Thank you for sponsoring HB 116. Mothers Against Drunk Driving and its Youth In Action program support HB 116 because we believe it will help in the prevention of underage drinking in Alaska. This bill will protect law enforcement's youth and adult agents who are essential to making sure that people under 21 are unable to obtain alcohol from licensees or other adults.

In order to check for compliance with Alaska's underage drinking laws, law enforcement officers sometimes use agents who attempt to obtain alcohol for people under 21. MADD has assisted in these checks, particularly in recruiting youth to serve as agents. Under current law, these agents are vulnerable to law suits by liquor licensees who wish to obstruct enforcement of the title four laws that govern the dispensing of alcohol. We believe youth and adults agents who courageously volunteer to help with enforcement of Alaska's liquor laws deserve our gratitude instead of having to fear being sued \$1000.

We believe the intent of statutes 04.16.049 and 04.16.065 is to allow liquor licensees to sue people \$1000 when their aim is to provide alcohol to teens, not to allow licensees to sue agents working with law enforcement. Most liquor licensees have not tried to abuse the law in this manner; however, at this moment at least one 18-year-old agent is being sued by a licensee. It is difficult to attract and retain youth agents for a number of reasons. The threat of a lawsuit will make it more difficult to attract agents in the future.

Studies have shown that ongoing compliance checks are important for ensuring that liquor laws are upheld. The more frequently and consistently compliance checks occur, the better licensees are about complying. In Juneau, for example, once compliance checks were instituted, we saw refusal to sell to minors go from a 67% compliance rate in 2000 to a 100% compliance rate in 2004. However, compliance rates typically slip when checks are discontinued.

We all know underage drinking is a big problem in Alaska. Thank you for helping to keep alcohol out of the hands of our youth.

Sincerely,

Jessica Paris

MADD Youth In Action Coordinator

Cindy Cashen

MADD Executive Director



State of Alaska
Department of Public Safety
Alcoholic Beverage Control Board

Frank H. Murkowski, Governor
William Tandeske, Commissioner

February 15, 2005

Representative Kevin Meyer
Alaska House of Representative
State Capitol
Juneau, Alaska 99801-1182

RE: HB 116—"An Act relating to the liability of certain persons for entry and remaining on licensed premises."

Dear Representative Meyer:

Your staff has requested a statement from the Alcoholic Beverage Control (ABC) Board regarding HB 116.

The ABC Board has conducted compliance checks for the last four years to address the public safety and welfare problem of selling alcoholic beverages to persons younger than 21 years of age. The compliance checks involve having young people between the ages of 16 and 20 attempt to purchase alcohol under the supervision of ABC Board investigators, municipal police, or Alaska State Troopers. The youth are instructed to be truthful in response to questions regarding their age and identification. The program has been very successful if judged by the metric of reducing sales to these underage customers. When the program began, alcohol was sold nearly 50% of the time and now the sell rate is less than 10%.

One tactic that has been raised by liquor licensees that do not like this increased oversight and enforcement is the claim that law enforcement agents are breaking the law to enforce the law by sending underage persons on to licensed premises in violation of AS 04.16.049. The ABC Board has been advised informally by its legal counsel that the compliance check protocol could be successfully defended under AS 11.81.420(b)(2). This statute says that conduct which would otherwise constitute an offense is justified if the person (in this case our underage customer) "believes the conduct to be required or authorized to assist a peace officer in the performance of the officer's duties." HB 116 applies this broad grant of immunity found in Title 11 to a very specific situation regarding alcohol law enforcement in AS 04.16.049. As long as there is no conflict between the statutes, the change makes very clear that properly administered compliance checks do not constitute a violation of Title 4. The ABC Board supports HB 116 since it does not appear to conflict with existing law.

Please contact me if you have any further questions.

Sincerely,

Douglas B. Griffin
Director

cc: ABC Board Members
Commissioner William Tandeske
Deputy Commissioner Ted Bachman
Cliff Stone, Special Assistant, Department of Public Safety
Anne Carpeneti, Asst. Attorney General, Department of Law

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Stings show drop in alcohol sales to kids

Purchasing rate of undercover agent fell from 40 to 26 percent

By **KATHY DYE**
THE JUNEAU EMPIRE

Liquor vendors in Juneau were less willing to sell alcohol to minors in 2001 during a second year of sting operations to crack down on underage drinking.

Although an 18-year-old working undercover was able to buy liquor 40 percent of the time last year, the agent's purchase rate dropped to 26 percent this year, according to data from the state Alcoholic Beverage Control Board, which led the effort with the Juneau Police Department.

The data show liquor vendors are getting the message, said Ed Kalwara, Juneau investigator for the alcohol board.

"That tells me the licensees in Juneau have become more conscientious," Kalwara said. "They're certainly trying harder, and they're a good bunch of people. They want to do the right thing."

Liquor vendors sold alcohol to the underage agent in 14 of 35 attempts in 2000, compared to four of 15 attempts in 2001, Kalwara said. The sting operation was one of three strategies used this year to bust people for liquor offenses. Investigators also did storefront surveillance to catch adults buying alcohol for minors, and they crashed some parties where kids were drinking.

Authorities this year issued a total of 54 warnings to adults and minors and cited 18 people: 11 minors for underage drinking, three adults for buying liquor for kids and four employees for selling it to them at the Breakwater Inn, Goldbelt Hotel, The Liquor Barrel and DeHarts. The maximum penalty for the employees is one year in jail and a \$5,000 fine, said Kalwara, who added liquor vendors could lose their licenses for multiple offenses.

An employee of DeHarts also was cited last year. However, the store was purchased after the incident, and new owner Lillian Harris said a clerk mistakenly sold alcohol to the agent because he entered the store during its busiest hours.

"You're behind the counter, people are shoving stuff at you from both sides, and he just slipped through," Harris said. "You try to look at everybody and make sure you ask them for the IDs, but it happens."

Eleven Juneau stores refused to sell alcohol to the agent, including Kmart, Kenny's Liquor, Liquor Cache, Percy's, Imperial Bar, Douglas Breeze In, Valley Breeze In, Fred Meyer, Fisherman's Bend, Carrs and Duck Creek Market.

State and local investigators launched the effort in 2000 with funding from a federal grant - about \$100,000 doled out statewide each fiscal year. Juneau's share the past two years was \$11,000 and \$14,000, said Kalwara, noting police officers volunteer for overtime to help in the effort.

Juneau investigators are renewing the grant for the fiscal year that began July 1 and tentatively plan to start a new rash of undercover operations in August. Kalwara said the next round could include a follow-the-keg program, meaning undercover officers posted outside stores would follow people who buy kegs to see if minors consume the beer.

They also might do more storefront stakeouts in which the underage agent, usually an 18-year-old, would ask adults to buy alcohol for him. Officers would cite adults who agree to the illegal transaction.

In addition, officers might pose as store clerks to catch minors who try to buy alcohol and adults who buy it for them, said Kalwara, who added they would first get permission from store owners.

Kathy Dye can be reached at kdye@juneauempire.com.

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YIA survey shows adults willing to buy alcohol for minors

Actual violations could result in \$10,000 fine, 1 year in jail

January 14, 2005

Mothers Against Drunk Driving

legal consequences of actually buying for someone underage. An ABC officer stood nearby to ensure the teens' safety and to assure people of the legality of the survey.

One pair of teens, which included a 14-year-old with braces on his teeth, had to wait only eight minutes before a young man said he would buy for them. Another pair of teens had to wait only about a minute before a middle-aged woman agreed. Overall, the teens spent one hour in two different locations downtown and found that four out of the 24 parties they asked were willing to buy.

"We were surprised and disappointed at how easy it was to find someone willing to buy," YIA coordinator Jessica Paris said. "However, we also had some adults who responded very admirably. One woman, not realizing it was a survey, went into the nearest liquor store and asked them to call the police. And at Kenny's Liquor Market, the clerk came out to investigate what the teens were doing."

One adult the teens asked happened to be state Rep. Kevin Meyer, who sponsored legislation last year allowing liquor stores to sue adults for buying alcohol for minors as well as the teens who solicit the alcohol. Rep. Meyer refused to buy for them, warning them he could get in big trouble.

"This survey shows us that we have to work harder to convince people they shouldn't provide alcohol to teens," Paris said. "Adults need to know about the tragedies that accompany underage drinking, as well as the serious legal consequences for providing to a minor."

ABC also conducted compliance checks over the weekend in which teen agents, aged 18 to 19, attempted to buy alcohol directly from liquor stores. Although Juneau had 100 percent compliance in last summer's checks, in 27 checks held last weekend, clerks sold to underage teens twice. Clerks, bartenders and wait staff face the same penalties for providing to an underage person that regular adults do - fines of up to \$10,000 and up to one year in jail, though a typical sentence is \$1,000 and five days in jail.

Last weekend, teens working with Mothers Against Drunk Driving's Youth In Action and state Alcohol Beverage Control officers discovered that it is not difficult to find adult strangers who will buy alcohol for teens.

Ranging in age from 14 to 19, the teens stood downtown near liquor stores and asked passing strangers to buy alcohol for them while admitting to be underage. Whether the adult answered yes or no, the teens then presented him with a card that explained this was only a survey, and the



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

Guide to Conducting Alcohol Purchase Surveys



Prepared by

Pacific Institute
FOR RESEARCH AND EVALUATION

In support of the
OJJDP *Enforcing the*
Underage Drinking Laws Program



Introduction

People who care about youth are aware of the serious problems caused by underage drinking. They realize that:

- Alcohol is the drug most commonly used by youth—more than tobacco and far more than marijuana or any other illicit drug.
- Alcohol is one of the most common contributors to injury, death, and criminal behavior among youth.
- Underage alcohol use can have immediate and potentially tragic consequences, as well as long-range harmful consequences, such as increased risk for chronic alcohol addiction.

There is no doubt that underage alcohol use is an extremely serious problem. But there are many effective strategies for reducing the problem. Strategies that *limit access* to alcohol by youth are some of the most powerful and well-documented approaches to reducing underage drinking and related problems.

The purpose of this guide is to promote the use of an important tool for monitoring underage access to alcohol—the purchase survey. These surveys involve sending young adults who appear underage (or minors under appropriate adult and police supervision) into stores to purchase alcohol. Communities and local groups can carry out purchase surveys of retail alcohol sales outlets to find out how easily available alcohol is to young people and to identify who is selling alcohol to youth. Such surveys provide extremely valuable information that can be used in addressing the problems of underage alcohol purchase and underage drinking.

This guide gives some of the background and rationale for these surveys as well as practical, step-by-step instructions for carrying out alcohol purchase surveys. The guide also shows how the information from the survey can be used to strengthen community awareness, promote better policies, and improve merchant compliance with the law.

Safe, efficient, and valid alcohol purchase surveys can be carried out in almost any community. This guide will show how.

Alcohol: The drug of choice for youth

National surveys of young people consistently show that alcohol is the drug of choice among young people. By the 12th grade, more than 80 percent of adolescents have experimented with alcohol, more than 50 percent report drinking within the previous month, and more than 30 percent report consuming five or more drinks in a row at least once in the previous 2 weeks (Johnston, O'Malley, & Bachman, 1998).

A recent study indicates that alcohol is responsible for 69 percent of all drug-related hospital stays among 10- to 19-year-olds. In contrast, tobacco accounts for 22 percent and other drugs for 9 percent of these hospital stays. Overall, 87 percent of years of life lost between the ages of 10 and 19 are alcohol related (Xie, Rehm, Single, & Robson, 1996).

In 1996, more than 6,300 young people between 15 and 20 years old died in traffic crashes. Of these fatalities, 2,315 (37 percent) were alcohol related. More than 21 percent of drivers aged 15-20 years old who were killed in traffic crashes in 1996 had been drinking (National Highway Traffic Safety Administration [NHTSA], 1998).

How Do Kids Get Alcohol?

Underage drinkers can obtain alcohol in many different ways—they can steal it or get it from their friends or their parents. In fact, kids are frequently quite creative in their schemes to get access to alcohol. All too often, however, they simply walk into a store and buy it—no questions asked, no identification requested, no problems encountered. Cutting off this type of easy access is the most important step toward preventing underage drinking in most communities.

Surveys carried out in various areas around the country have found that youth were able to buy alcohol in between 50 percent and 97 percent of stores, bars, and restaurants where attempts were made.

Studies indicate that enforcement of underage sales laws is lax in many communities. Police cite a number of reasons for not enforcing underage sales laws; most importantly, they perceive a lack of public support for such activities. This is unfortunate because research shows that enforcement can significantly reduce alcohol sales to minors.

Why Conduct Alcohol Purchase Surveys?

Illegal sales to minors can be prevented. A variety of strategies have been shown to be very effective, but most communities need valid information in order to make the best use of these strategies and to monitor their impact. Alcohol purchase surveys can help provide this information. In addition, the data obtained from purchase surveys can be used to increase support from the public and from public officials for policy changes and for more generous allocation of resources. This process is depicted in figure 1 as circular and involves a variety of segments of the community.

How Do You Conduct Purchase Surveys?

In order to carry out a purchase survey, a representative sample of alcohol outlets is selected. At each outlet in the sample, a buyer who appears to be underage attempts to purchase alcohol without presenting age identification (ID). If the outlet sells alcohol to the buyer, it is considered noncompliant. If the outlet refuses to sell to the buyer, it is considered in compliance. Details of this procedure vary, but the basic process is similar in all alcohol purchase

surveys. A flowchart of the tasks involved in conducting an alcohol outlet purchase survey is presented in appendix 1.

Purchase surveys are extremely useful, and they can be conducted practically, efficiently, and flexibly. This guide explains how to plan and carry out surveys under a variety of circumstances. It also provides sample protocols and materials that can be adapted for use in communities across the country.

Underage Purchase of Alcohol

Purchase surveys conducted in medium and small cities in Minnesota and Wisconsin have found youth able to purchase alcohol in about half of the attempts in both on- and off-premises outlets (Forster et al., 1994; Forster, Murray, Wolfson, & Wagenaar, 1995).

Another study surveyed communities in New York State and Washington, DC. Fully 97 percent of the Washington, DC, outlets sold to youth. Sales rates in New York varied from 44 percent to 80 percent (Preusser & Williams, 1992).

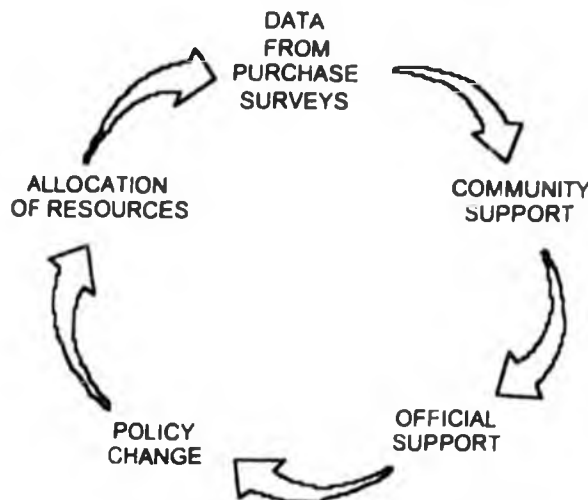


Figure 1. Survey Data and Community Process

Five Reasons for Conducting Alcohol Purchase Surveys

1. Purchase surveys indicate who is selling alcohol to minors and how often. This lets a community know how large the problem of underage sales is and among which outlets. This information can be very useful in allocating scarce enforcement and prevention resources.
2. The results of surveys can be used to help raise community awareness and build support for efforts to reduce sales to minors. For example, some communities have called press conferences in which the buyers pose with all the beer they have managed to purchase from local stores. Such events can bring attention to the problem of alcohol sales to minors and make it easier for policymakers, merchants, and concerned citizens to act.
3. Purchase surveys can be an intervention. Informing merchants that they are being monitored by the community and providing them with feedback can motivate those with good policies and sales practices to continue them and motivate those with poor policies and practices to change them.
4. Purchase surveys can be an important part of enforcement. Some communities choose to issue citations to outlets who sell to minors during the surveys. Other communities use the information from the surveys to help target later enforcement efforts. *In either case, local police or Alcohol Beverage Control (ABC) authorities must always be involved when enforcement efforts are planned as part of a purchase survey.*
5. Purchase surveys can be used to measure the impact of prevention strategies. A series of surveys carried out over time can indicate whether prevention efforts are having an effect on sales to minors. This information can help communities decide whether to continue or discontinue particular policies or programs and can indicate how to modify prevention strategies to make them more effective.

OJJDP U.S. Department of Justice

**REDUCING
THIRD-PARTY
TRANSACTIONS
OF ALCOHOL**

TO UNDERAGE YOUTH

Prepared by

Pacific Institute

FOR RESEARCH AND EVALUATION

In support of the
**OJJDP Enforcing the
Underage Drinking Laws Program**

community who is aware of alcohol sales to people under the age of 21 (third-party or otherwise) to pass this information along to enforcement agencies. These "tip lines" may be through the police department, liquor control agency, or a community agency/organization working closely with enforcement efforts in the area.

Surveillance

Surveillance is another strategy for assessing where and when third-party transactions happen in your area. This observation within your jurisdiction can take a variety of forms and levels of intensity. If your department and community are still trying to determine where third-party sales occur, surveillance activity may involve asking officers on their routine patrol to be on the lookout for these transactions. While many third-party sales occur in open areas such as store parking lots or street corners, other exchanges happen in remote, hidden areas of the community, such as dead end streets, woods, and vacant lots. Therefore, it is important for patrol officers to include these areas in their rounds.

If you already have a sense of the "hot spots" in your area, you can conduct more specific surveillance in order to interrupt third-party transactions as they occur. Officers placed at or near locations popular for "shoulder taps" can watch for an exchange to start and address both parties as the transaction occurs. Some enforcement agencies use officers in "plain clothes" during surveillance in order to blend into the scene and not raise the suspicions of the adult purchaser or the youth.

"Shoulder tap" Enforcement Programs

"Shoulder tap" enforcement programs are similar to compliance check programs except that they target the underage drinkers and/or the non-commercial supplier of alcohol to youth instead of the vendor. Police departments or liquor control agencies carry out these programs, working closely with the community, youth, and local media to ensure their effectiveness. An example of a "shoulder tap" enforcement effort that focuses on stopping the underage purchasers is run by the Montgomery (MD) County Police

Conducting "shoulder tap" enforcement programs using underage decoys

Some enforcement agencies have established procedures for "shoulder tap" enforcement programs using underage decoys. While each department's guidelines must conform to local and state laws, a summary of the California ABC Department's procedures is offered as an example.

Implementation

The California ABC Department finds that its Decoy Shoulder Tap Program is most effective in areas where compliance checks have already been conducted and where most licensed premises were found in compliance. Additionally, the department uses this program when it has specific information or complaints that underage youth have changed their method of gaining alcohol from attempting to purchase directly from retailers to requesting that adults purchase and furnish them with alcohol. The department obtains this information from a variety of sources, including parents, youth officers, patrol officers, and members of community groups.

Preparation

The department contacts the local District Attorney's Office to ensure that they are willing to prosecute any misdemeanor violations found during the "shoulder tap" enforcement program. It is also recommended that the Municipal Court Judge most likely to preside over criminal charges be contacted and given an overview of the program and its purpose. To educate the public and gain support of these efforts, the department sends a formal press release to all local news media to announce the "shoulder tap" enforcement program. The department uses this media contact to emphasize that the goal of the program is not necessarily to make arrests, but to inform the public about the problems related to furnishing alcohol to underage youth and the legal consequences for doing so.

The selection of the underage decoys is clearly a critical part of the department's preparation.

Requirements for the underage operatives include:

- ☐ the decoy should be under the age of 20 at the time of the operation, preferably under 19 years old
- ☐ the decoy should have the appearance of a person his or her age

Department. Montgomery County police officers dress in "plain clothes" and stand in parking lots of retail establishments. The officers then wait to see if youth ask them to purchase alcohol. Often, the officers will wear clothes that allow them to blend in with a

- the decoy should be willing to wear a radio transmitter and to have his or her conversations recorded
- the decoy must be willing to testify in any criminal and administrative proceedings resulting from the operation.

As an additional preparatory step with the underage operatives, the Minneapolis Police Department photographs the decoys immediately before conducting the operations; this procedure offers proof that no attempts were made to make youth look older than their actual ages.

The California ABC Department instructs the underage volunteers to always tell the truth about their age and the fact that they cannot purchase alcohol for themselves.

Investigation and operation

The underage decoys are equipped with a radio transmitter and placed under the direct supervision of a law enforcement officer. If the approached adult does furnish alcohol to the decoy, the youth walks to a pre-designated location. To provide added security to the youth, the adult is allowed to move away from the decoy before being detained by the enforcement officers. The detained adult is then Mirandized and asked to give a verbal statement. Enforcement officers ask the adult why he or she provided alcohol to the young person and how old he or she thinks the decoy is. The suspect is then booked into the jail whenever justified; the California ABC Department, working with local law enforcement, uses the state's "misdemeanor non-release" provisions whenever possible.

This abbreviated account of the California ABC Department's procedures may offer your department a blueprint if you plan to operate a "shoulder tap" enforcement program. However, it is important that you check your state and local statutes to ensure that the use of underage operatives is permitted and that other laws governing the distribution of alcohol to those under the age of 21 will support this strategy.

(California ABC Department, n.d.)

neighborhood's street alcoholics, who are frequently "shoulder tapped" by underage drinkers.

Other "shoulder tap" enforcement programs use underage "decoys" to approach adults outside an alcohol outlet and request that the

adult purchase alcohol on the decoy's behalf. *Not all states permit the use of underage operatives in the enforcement of alcohol statutes; check with prosecutors in your area if you are considering this type of "shoulder tap" enforcement program.* The California Alcohol Beverage Control Department, Montgomery County (MD) Police Department, and the Minneapolis (MN) Police Department are examples of enforcement entities that use this strategy to address third-party transactions. These departments have established procedures for "shoulder tap" enforcement programs (see box on pages 12-13), including guidelines for the decoy's actions that are similar to those used in compliance checks (e.g., no deception, false identification, or attempts to look older). The departments also take precautions to safeguard the underage decoys by training them prior to the operations, equipping them with radio transmitters during the attempts, and placing them under the direct supervision of a law enforcement officer. Attempts to complete these enforcement activities are broken off immediately if there is any sign of danger (e.g., the adult asking the decoy to get into a car, the transaction moves out the direct view of the back-up teams). In conducting these enforcement activities, the California ABC Department discovered an added benefit to these operations. During one year of the "shoulder tap" enforcement program, 37 percent of the adults cited for purchasing alcohol for youth were either on parole, probation, or had outstanding arrest warrants. Therefore, their efforts to reduce underage drinking also resulted in other enforcement benefits in the state.

Strategies To Reduce Familiar Third-party Transactions

While strangers providing alcohol to youth contribute to underage access, parents, older siblings, other relatives, and friends are also a significant source of alcohol for underage drinkers. Because most of

① 1. The statute allowing a premises owner to bring a civil action against a minor for

this act applies retrospectively ... 04.16.049 that are ~~reversal~~ claims that are not determined by final judgment on or before the effective date of this act.

this act applies retrospectively to all actions and proceedings under AS 04.16.049 - 04.16.060 ~~reversal~~ that are not determined by final judgment before the effective date of this act.

Admin hearings ...? vs. district court.

insurance costs - workers comp