

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10854 HOUSE JUDICIARY

The Guardian / Conservator Petitioning Process

11/20/01dj

Decide that the person may need a guardian or conservator

- Review Video, then
- Hire a Family Law Attorney, or
- Get Alaska Psychiatric Institute or Div of Senior Services to file through the AG's for their own clients, or
- Get packet and complete yourself.

Petition is filed

- \$50 filing fee, can be waived
- may sign at court

Then, Probate Court will

- Review petition
- Set a hearing date (within 120 days)
- Appoint a court visitor
- If a guardianship, appoint an attorney for respondent and
Appoint a medical expert to determine capacity or have court visitor designate

Before the hearing

- Court Visitor will investigate and prepare a report to the court
(visit respondent, talk with petitioner, family, professionals, and get the medical expert's report. Inform respondent of their rights, make a recommendation about alternatives, what is needed, and who should perform.)(file 10 days prior to court)
- Attorney will visit with respondent

Court Hearing

- Before a Probate Court Judge or Master
- Closed hearing (not open to general public)
- Persons present may include judge, court clerk, respondent, their attorney, petitioner, court visitor, proposed guardian/conservator, involved persons that the court or respondent allows.

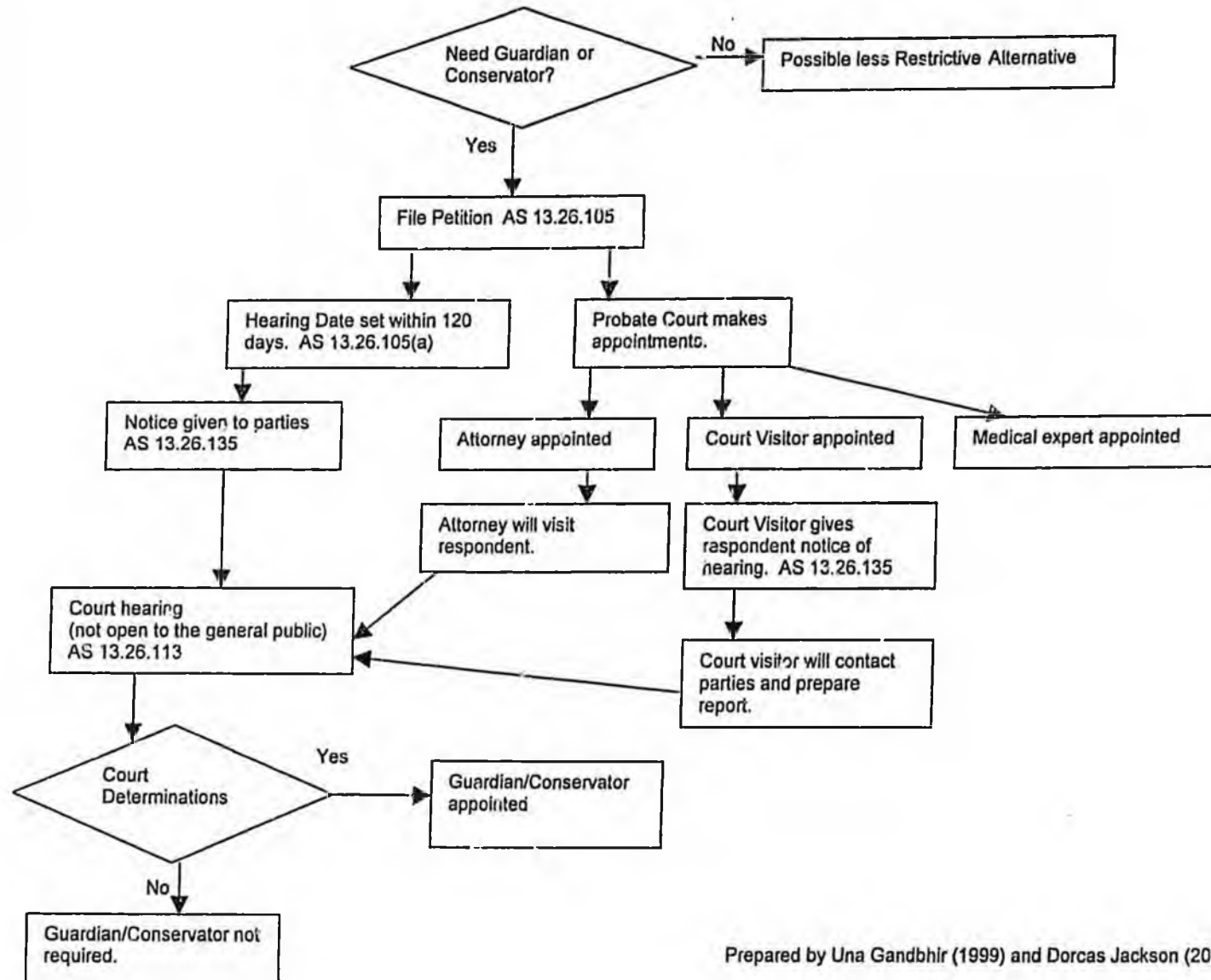
Generally at the end of the hearing the judge will determine

- Jurisdiction
- Incapacity
- What type of G/C the respondent needs
- Who should be the G/C
 1. Family / friend
 2. Private Guardian Service Provider
 3. Public Guardian (only last resort)

On-going Guardian/Conservator responsibilities

- Make decisions allowed in Court Order
- Complete 90 days report
- Complete annual reports

The Guardianship Process



Prepared by Una Gandhir (1999) and Dorcas Jackson (2001 & 2002)



THE ALASKA STATE ASSOCIATION FOR GUARDIANSHIP AND ADVOCACY

Enclosed you will find a draft bill for Guardianship Reform prepared by an ASAGA (Alaska State Association for Guardianship and Advocacy) with the assistance of Senator Gary Wilken. ASAGA is committed to preventing the exploitation and mistreatment of vulnerable adults. In addition to the bill, you will find a packet of educational information to help you understand adult guardianship issues and the reason for considering guardianship reform.

In 2003, at least 14 states passed a total of 19 adult guardianship bills, as compared to ten bills in ten states in 2002. In 2001, 16 states passed a total of 26 bills and in 2000, 15 states passed a total of 24 bills. ASAGA believes that Alaska's guardianship statutes are ripe for reform.

ASAGA's efforts with respect to guardianship reform began with two open forums at the annual conference in 1997. Several dedicated members worked on projects which later dovetailed with the recommendations from the McDowell Study. Following the incident in 2002 where a private agency filed bankruptcy, ASAGA has renewed its efforts for recommendations for statute reform. These along with the previous recommendations in the 2002 SB 190 should be introduced this session.

These are items that ASAGA hopes to have happen with its reform efforts.

- Clarify and improve current law AS 13.26.005 – 13.26.410
- Create a mechanism for regulating private agencies that offer guardianship services
- Develop regulations for governing private professional guardianship agencies
- Adopt National Guardianship Association Model Code of Ethics and Standards for professional guardians
- Assure that professional guardians in Alaska are certified and meet minimum established criteria

- Mandate training for both professional and family guardians

ASAGA believes that all professional guardians and their agencies should be both registered (approved to do business by the Division of Occupational Licensing) and certified (tested on guardianship standards by a central authority such as the National Guardianship Foundation).

In Alaska, professional guardians, both private and public, and family guardians provide services to approximately 2500 disabled, vulnerable adults. The Office of Public Advocacy accommodates the Public Guardian program and employs 14 public guardians in three locations across the state. They serve over 831 vulnerable adults. Twelve of the public guardians are certified with the National Guardianship Foundation and four are classified as Master Guardians.

There are six private professional agencies in the state that accept protective order appointments. Only two accept guardianship appointments at this time, however of the seven associates working for these two private agencies, six are certified guardians with the National Guardianship Foundation and one is classified as a Master Guardian.

Of the 21 professional guardians practicing in Alaska, 86% are certified with the National Guardianship Foundation. Several more have taken the test for registered guardian or master guardian and are awaiting the results. The Court Visitor Coordinator is also certified as a registered guardian.

While Alaska is fortunate to have a strong public agency to meet guardianship needs for indigent citizens, we do have needs in other areas. Many states have enacted measures to strengthen the monitoring capacity of the court. ASAGA believes that is ultimately up to the court to monitor the guardianships that they grant. Therefore, ASAGA believes that a two-prong approach is necessary. Not only do we need to have legislative changes, we need to have the courts embrace their duty to monitor the existing guardianships.

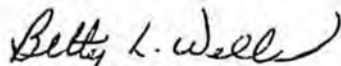
Alaska does very well with respect to due process and pre-investigation of guardianship cases. Respondents have a multitude of rights including a right to an attorney, the right to be present in court and the right to have a court visitor appointed to

do an independent investigation. As with other states, Alaska needs to address deficiencies in the monitoring and accountability.

We hope this packet assists you in understanding the guardianship process so that you can make informed choices when the reform efforts come your way.

For more information, you can reach me at the numbers below.

Sincerely,



Betty L. Wells
Court Visitor
Chair/ASAGA Legislative Committee
And Guardianship Reform Taskforce

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DEFINITIONS OF TERMS USED IN GUARDIANSHIP/CONSERVATORSHIP PROCEEDINGS

PETITION: A document filed by an individual or agency who wishes the Court to appoint a guardian or conservator for an individual believed to be incapacitated. This document identifies the circumstances of the individual's condition and sets the guardianship and/or conservatorship process in motion.

RESPONDENT: The person for whom guardianship and/or conservatorship is being sought.

PETITIONER: The person or agency who petitions the Court for a finding of incapacity or the need for a protective order, and the appointment of a guardian and/or conservator for an individual.

RESPONDENT'S ATTORNEY: The attorney appointed by the Court to represent the respondent's wishes throughout the guardianship and/or conservatorship proceeding. An attorney for the respondent is automatically appointed in a guardianship proceeding. Alternatively, the respondent may elect to utilize an attorney of his/her own choosing. In conservatorship proceedings, a respondent may choose to represent himself or herself, or may request the Court to appoint one on his/her behalf. The visitor may also request an appointment of an attorney for a respondent in a conservatorship proceeding if he/she deems it appropriate.

PETITIONER'S ATTORNEY: The attorney retained by the petitioner to represent his/her interests in the guardianship and/or conservatorship proceeding. The petitioner may elect to retain an attorney, but is not required to do so.

GUARDIAN AD LITEM (GAL): A special temporary guardian appointed by the Court to represent the best interests and rights of the ward or respondent in the proceedings. A GAL is appointed if the Court decides the respondent cannot determine or express his or her own interests because of impaired ability. An attorney for the respondent may ask the Court to change his/her appointment to that of a GAL if he/she believes the respondent is unable to express his/her wishes.

COURT VISITOR: A neutral person trained or experienced in law, medicine or medical health care, education, rehabilitation or social work, etc. who is appointed by the Court to make a thorough investigation and evaluation of all information relevant to the respondent's case. The Court Visitor has no special interest in the proceedings. The Court Visitor's appointment is vacated after the appointment of a guardian and/or conservator, but is reappointed if there is an order to review the guardianship or conservatorship.

PROBATE MASTER: An officer of the Court who hears and recommends a ruling to the judge on guardianship and/or conservatorship proceedings.

EXPERT: A professional from the medical or psychological community who is aware of the respondent's physical and/or mental functioning and provides a report to the Court documenting the respondents capacity.

CONSERVATOR: One who is appointed to manage the business and financial affairs of a person unable to do so for themselves. A judicial finding of incompetence is not required for conservatorship to take effect.

GUARDIAN: One who lawfully has the general care and control of the person of the ward. Guardians make medical and placement decisions on behalf of their ward.

WARD: A person who has had a guardian appointed by the Court.

PROTECTED PERSON: A person who has had a conservator appointed by the Court.

PUBLIC GUARDIAN: One employed by the state to act as guardian and or conservator, used as last resort when no private person or agency is able or available to act in this capacity.

PROFESSIONAL GUARDIAN: An individual, agency or organization that provides guardian/conservatorship services to individuals, and receives compensation for this service.

FAMILY GUARDIAN: A family member or friend of the ward who provides guardian/conservator services to the ward.

REPRESENTATIVE PAYEE: a person or agency who receives federal funds on behalf of another if the recipient is unable to manage their own finances. The Social Security Administration makes this determination, and a court order is not required for the appointment of a representative payee.

CASE MANAGER OR CARE COORDINATOR: A person, usually, but not always, affiliated with an agency, who oversees, arranges and coordinates the care of an individual. The case manager does not provide direct care, but arranges for needed services and monitors those services.

CARE PROVIDER: An individual or institution that provides direct care or assistance to an individual. This may include meals, assistance with activities of daily living, transportation, monitoring of medications, recreation, etc.

SPECIAL ADVOCATE: An individual designated by the Court who is entitled to receive information about a ward's or protected person's financial, medical and housing arrangements, but retains no decision making responsibility or authority. This appointment is usually made when a guardian or conservator is appointed.

INTERESTED PARTIES: Individuals or institutions including heirs, children, spouses, creditors, beneficiaries and any others having a right to, or claim against the estate of a ward or protected person that may be affected by the proceedings.

REVIEW HEARING: This hearing is conducted when an established guardianship and/or conservatorship may need to be revised, changed or terminated. Any interested party may request such a hearing if they have concerns about the guardianship/conservatorship. In addition, any other person who has knowledge or contact with the ward or protected person, such as a case manager, physician, care provider or social worker, may request such a hearing.

90 DAY IMPLEMENTATION REPORT: A report submitted by the guardian and /or conservator to the Court 90 days after his/her appointment. Forms for this report are provided by the Court. It outlines the current health, residence and financial status of the ward or protected person.

ANNUAL REPORTS: A report submitted by the guardian and/or conservator to the Court on an annual basis. Forms for this report are provided by the Court, and include information pertaining to the ward or protected person's general state of health, residence and financial status.

THREE YEAR REVIEWS: A report prepared every three years by the court visitor outlining the status of the guardianship/conservatorship. This includes information about any changes in the capacity of the ward, his/her financial situation, and whether the existing orders need to be modified. Based on the findings of the visitor, a hearing on the guardianship and/or conservatorship may be scheduled.

Comparison of Guardianship and Conservatorship

	Guardianship	Conservatorship
Basic Difference	Wellbeing of person	Conserve Finances
Who starts it	Petitioner	Petitioner
Venue (which court)	Where person lives	Where person or assets are
Person before the hearing is called a	Respondent	Respondent
Appointments	Court Visitor (always) Expert (Medical)(always) Attorney for respondent (always)	Court Visitor (generally appointed) No expert usually needed Attorney (may be appointed)
Findings	Incapacity	Assets wasted or dissipated
The person after hearing	Ward	Protected Person
Who is appointed	Guardian	Conservator
Responsibilities	Medical & Informed Consent Placement (housing) Services Things that affect well-being, quality of life	Receive Income Pay expenses Protect Assets Liabilities Taxes Benefit Applications
Reports Due	G Implementation (90 days) G Annual (every year) G Final	C Inventory (90 days) C Annual (every year) C Final
Documents	G Order Letters of Acceptance G Plan	C Order Letters of Acceptance
Bonding	May be required in Full G that includes the conservatorship	Required unless Judge/Master chooses not to require
Fees	Must be authorized by Judge/Master	Must be authorized by Judge/Master
Ends	At death or when changed by court	At death or when changed by court

**STATE OF ALASKA
OFFICE OF PUBLIC ADVOCACY**

FRANK MURKOWSKI, GOVERNOR

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April 6, 2004

The Honorable Peggy Wilson, Chairwoman
House Committee on Health,
Education & Social Services
Alaska State Legislature

RE: House Bill 427, An Act relating to guardianships and conservatorships

Dear Representative Wilson,

Thank you for hearing House Bill 427 in the HESS committee. It is my firm belief that this legislation is critical to ensuring the safety and well being of vulnerable adults under the supervision of guardians and conservators. It is my further belief that this legislation is a prerequisite to the establishment of private guardians and conservators in Alaska to serve our State's growing population of vulnerable and incapacitated adults. Again, thank you for addressing this legislation.

Having said that, I need to address certain comments and testimony given at the last committee meeting that may have led to some misunderstandings.

First, this legislation would result in the regulation of professional guardians and conservators – those who are in the *business* of providing guardianship and conservatorship services. It would not impact family members who are performing this role for their disabled family members. It would also exempt financial institutions who are performing this role, since they are sufficiently regulated under current law. The only provision in this legislation that imposes a new requirement on family guardians is proposed AS 13.26.145(c), which states that when appointing a relative or friend as guardian the court shall require that the proposed guardian complete one hour of mandatory education on the basics of guardianship. OPA would provide this training at no cost to that individual.

There were also several comments made about the Public Guardian section of the Office of Public Advocacy (OPA) that must be corrected. OPA does not charge \$40 an hour for guardianship services as was represented by a witness from Fairbanks. OPA charges monthly fees for conservatorship and guardianship services which are set forth in regulation and are based upon the total value of a client's liquid assets. Forty dollars (\$40) per month is charged to clients who have liquid assets of less than \$10,000. Above that, a sliding scale is applied. In no case shall the monthly fee exceed \$145. The great majority of OPA's public guardian clients have

The Honorable Peggy Wilson
April 6, 2004
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extremely limited resources and are either charged \$40 per month for our services or receive fee deferrals and/or fee waivers as a result of financial hardship.

It was also suggested that OPA's public guardians should fall within the coverage of this legislation. This suggestion ignores the fact the OPA's public guardians are State employees and are regulated by the processes of State government. OPA's guardians are subject to oversight by the Public Advocate, who reports to the Commissioner of Administration. Both the commissioner and myself serve at the pleasure of the governor. We are also subject to oversight by the Legislature. Moreover, assuming for purposes of argument that a public guardian were to take financial advantage of a client, that client would be protected and the risk management function of the Department of Law would indemnify all client losses. Finally, and most importantly, OPA's guardians have demonstrated their proficiency and expertise in providing services to our clients. The legislation before the committee would require all private guardians to register with the National Guardianship Foundation which requires the passage of a written guardian exam. Currently, all public guardians have passed this exam and are registered with the National Guardianship Foundation. Four public guardians have achieved advanced certification by passing the National Guardianship Foundations' master guardian exam. In short, OPA's guardians currently meet the professional registration requirements called for in this legislation, and OPA's client's have the financial protections imposed by the bill on private guardians.

The witness from Fairbanks also stated that the court visitors should be included in the coverage of this legislation. This statement evidences a lack of understanding of the role of the court visitor. In short, the court visitor is an uninterested third-party who provides an objective analysis to the court on whether a guardianship should be approved. The court visitor is responsible for arranging evaluations of the person subjected to a guardianship petition (the respondent). In addition, the visitor is charged with interviewing the petitioner and the respondent, friends, family, care providers, and others who may have information on the abilities and or disabilities of the respondent. The court visitor then prepares a written report with recommendations to the court in advance of the scheduled court hearing. Most importantly, however, while the court visitor has access to the respondent's financial records as provided in the court order, they do not have access to the financial resources of the protected person. Therefore, there is no reason to impose a bonding requirement as was suggested by the witness from Fairbanks. Finally, while the Legislature chose to transfer the court visitor function from the court system to OPA, court visitors are independent contractors and are not employees of OPA or any other state agency. I would not object to this function being returned to the court system.

It was implied that the OPA is in league with the court visitors to steer cases towards the public Guardians. This is not the case. The public guardians at OPA have high caseloads and OPA has no incentive to increase the number of cases they are now carrying. Cases are regularly reviewed - as required by statute - to determine if there is a family member, friend, or private

OPA's guardians do not currently undergo criminal background checks as called for in the legislation. However, upon applying with the State, applicants must identify and explain any criminal history. OPA is currently considering proposing criminal background checks on its public guardians.

The Honorable Peggy Wilson
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Page 3

organization who can assume the role of guardian or conservator. OPA is guardianship resource and appointment of last resort. To the extent our clients can be served by family or private entities, OPA aggressively seeks these alternatives.

It was also suggested that OPA regulates private guardians. This is not accurate. OPA provides public guardians where no alternative is available. We have no regulatory authority over private guardians. Having said that, OPA does have an obligation to ensure that persons of competence and training serve our clients and other vulnerable Alaskans.² This goal would be served by passage of House Bill 427.

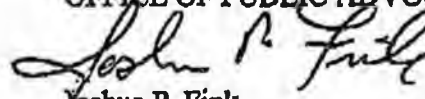
Finally, the private guardian from Fairbanks also made representations regarding the process by which this bill was drafted. While no doubt well-intentioned, her comments demonstrate a misunderstanding of that process. This legislation resulted from the collaborative participation from a number of individuals and agencies concerned about guardianship reform. They included Adult Protective Services, The Alaska Trust Company, the Alaska Court System, the Office of the Long Term Care Ombudsmen, the Office of Public Advocacy, the Disability Law Center, private attorneys, court visitors, and private professionals providing guardianship and conservatorship services. Mr. Dave Shady, the principal at PGSC, was also invited to participate.

In closing, I would only state that it is not possible to respond in this letter to all of the verbal and written comments made by the witness from Fairbanks. I am happy to make staff and myself available to address any concerns or issues committee members may have regarding her testimony, or any other concern with this legislation.

Thank you again for hearing this important legislation.

Sincerely,

OFFICE OF PUBLIC ADVOCACY


Joshua P. Fink
Public Advocate

² To this end it is also accurate to state that the former director at OPA had a hand in pointing out to the court concerns about suspected irregularities and mismanagement at CAPA, a private guardian, who is now the subject of ongoing litigation. As such, I would prefer not to comment. However, I will make myself available to legislators who may wish to discuss this matter, and would note that the case was covered extensively in both Anchorage and Fairbanks' newspapers.

Professional Guardian Services Corporation

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Fairbanks, AK 99701

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FAX COVER / MESSAGE SHEET

Date: 4/5/04

Number of pages: 5 (including cover page)

Message From: "B" Jarvi
NAME TITLE

Professional Guardian Services Corporation
Fax No.: (907) 458-8860 Phone No.: (907) 458-8850

Message To: Peggy Wilson
NAME TITLE

COMPANY / AGENCY NAME DEPT/REGION

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Message:

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TO: Peggy Wilson

RE: Unfinished Testimony HB 427

BY: "B" Jarvi

With regard to HB 427 formulated by ASAGA (90% membership composed of OPA employees) OPA staff and directors, court visitors (OPA contractors) and a few others, I do affirm that I was not invited to join in the development of the draft of the bill. This is the second time they submitted a self-serving bill. Senator Gary Wilken was approached to sponsor the former bill; when he found that assurances had been made to him then too and the committee that were not based on fact, he refused to sponsor the bill.

I again affirm that I have no objection to stringent licensing and certification procedures that include criminal checks. However, I do object that only private professional guardians are singled out for these licensing requirements. I want to see that guardians hired by the Office of Public Advocacy be required to meet the same requirements and that they also have to absorb the cost of licensing and certification prior to their being hired by the state agency. These conditions and requirements for liability insurance and criminal checks should apply to OPA employees and contractors as well.

References were made to the fact that CAPA went bankrupt and that the OPA is still dealing with the fallout of that situation. CAPA's director reported the problems on her own when she discovered the irregularities which had occurred during the directorship of the former director. Somehow, the OPA which is charged with the oversight of private guardians had remained in the dark about the situation for some time. Court visitors did not recognize the problems until they were pointed out to them. It is my understanding that CAPA had sufficient insurance coverage to protect all of the clients but OPA attorneys failed to file the necessary claims despite being informed of the fact. The former director of CAPA was told in a recent case by the probate master that in all evidence submitted to the Master for review, the Master could find no evidence that the director had done anything wrong.

OPA's court visitors need to meet stringent requirements and the background and educational checks as well. There is no way they can review the work of a licensed guardian or conservator unless they meet the criteria themselves. It is my belief that all court visitors should be qualified to meet the requirements for the RG or MG exam. They should all serve an internship under the direction of a qualified guardian or in a guardianship agency. OPA should not intern its own court visitors.

Complaints about OPA case management, lost assets, making partial guardianships full when transferred to OPA, without petition or hearing or notification of spouses or family members, lack of sensitivity to cultural and ethnic norms and customs, failure to exercise the duties of a guardian or conservator are commonplace. OPA has been subjected to

four legislative audits and the conflict of interest it has with private agencies by virtue of being both a regulator and competitor were mentioned in all of them.

The conflict of interest issue and the lack of training exhibited by OPA's court visitors was also the subject of an Elders Issues Task Force forum to which Interior legislators were invited. The recommendations recommended that OPA's own work be reviewed on the same basis as that of private professional agencies and that could only be achieved by moving the court visitors away from the OPA. Other recommendations included a request that court appointed attorney contracts be abolished and that attorneys to represent respondents be drawn from a list of attorneys willing to handle the cases, or in the alternative, have a GAL other than the sole contractor attorney appointed in every case; that public guardians not be allowed to give Powers of Attorney on behalf of their wards to other private non-profit agencies who provide services to the ward; that OPA be required to account for all assets and their disposition. There were others.

Now, on to the unfinished testimony:

Article 3 Practices Sec. 08.26.110

How can the fee schedule of a private professional entity show a maximum amount that the ward or protected person? I would prefer that it be amended to read that "The fee schedule.....and will agree that the entity will not charge the ward in excess of an amount that represents OPA's costs to provide the necessary services" In court OPAs' attorneys represent that OPA charges \$40 per month, therefore, the contract attorney/GAL argues that it is in the ward's best interest to have OPA serve as guardian/conservator. What they do not represent to the court is that private entities have to pay their own overhead and benefits and other costs of doing business. For instance, I know of no other guardians who are paid \$35 per hour with a full benefit package other than at OPA. The last study made on the subject two years ago placed the cost to the state at \$1,742. Per month per ward to provide guardianship/conservatorship services. Price fixing becomes something that buries private entities. Another problem is that an OPA attorney will call for hearing after hearing just to get a private agency to cave in. We cannot appear in court without an attorney at our expense; OPA's court appointed attorneys are at state expense. In a recent case, where PGSC offered to do a case for free at no cost to the state, the court appointed attorney and the court visitor called for a number of hearings. Because PGSC was not being paid for its work due to a complete lack of funds above and beyond the cost of care, we could not afford to pay an attorney to fight for the case. We gave up...the state now had an additional \$1,742 to pay in OPA costs as opposed to having a vulnerable person in a nursing home being cared for at no cost to the state for the guardianship and conservatorship.

Page 10, Sec. 13.26.001 Adoption of standards of practice.

(8) Why is the "department" allowed to be present only when a private professional guardian or a private professional conservator is involved in the proceeding? Why does this not include OPA and private family guardians?

Page 11 Sec. 13.26.025 Appointment of a guardian ad litem.

Why this section? It appears to assure the court appointed OPA attorney a guarantee of being on the state payroll indefinitely. An attorney is appointed for the guardianship/conservatorship proceeding and his role ends with the appointment of a guardian or conservator as the case may be. He then is to take his direction from the appointed guardian or conservator rather than the incapacitated ward. Keeping him on as guardian ad litem will assure his continued control of the guardianship for OPA.

Further, if OPA competes with the private sector for appointments, it is a serious conflict of interest for them to also be allowed to serve as guardian ad litem for wards in the private sector. OPA should not be allowed to regulate and compete with the private sector. They need to either be a regulator and overseer or a service provider but not both.

Page 15 Sec 12. Sec 13.26.12(a) amended to read or on the court's own motion, should not be allowed. If OPA is charged with oversight and regulation, then this is yet "one more threat without recourse" to professional guardians who are not affiliated with OPA. It sounds as though there is no recourse or due process here.

Page 23 Sec. 24 AS13.26.285(e)

Needs to be qualified. Many times families who do not live in Alaska and who have little or no contact with a ward or protected person will ask the conservator to take care of all burial arrangements and to close out the case without the family's involvement. I would like to see something in the statutes that families can authorize a conservator to proceed as a personal representative would as long as there is a stipulation or sort of power of attorney given to the conservator either prior to death of the ward or protected person or immediately after death by heirs and or family members.

Page 24 Sec. 26 AS13.26.380(b)


Should be left as is or modified to reflect that the public guardian must report on its efforts to find a suitable entity or person to serve as guardian and/or conservator. The proposed change asking only for information on the availability of a private guardian or conservator is dangerous. OPA should be required to report on such availability when they appear for the permanent hearing or when they file the guardianship implementation plan, 90 days after permanent appointment. IN a recent case OPA spent down a client from CAPA (whose case OPA was supposed to be looking over for irregularities before transferring the case to a private entity) in an alarming manner during OPA's temporary appointment. He went to OPA with \$110,000, less than 6 months later, OPA had spent him down to \$25,000 with a use for that, too. It is too long a time for OPA to have a client for one year before trying to find an alternate guardian or conservator. Besides at the current time, OPA's conservatorships are not being reviewed by court visitors

because "we have a conflict of interest because we contract with OPA and there are too many OPA cases."

In closing I would like to state that the Native groups and organizations were not asked for input. Furthermore, the Real Systems Task Force is working on changes that might impact Alaska's guardianship and conservatorship system.

There has been much attention focused on guardians and their ignorance of ADA and independent living advocacy and the issues involving that. . . Accountability of all guardians is a hot topic right now, not just the professional guardians; in fact the majority of complaints about guardians center around the state agencies that provide such services.

This is a self-serving bill that is designed to assure the perpetuity of a state agency that not at all regulated but is allowed to function both as competitor and regulator of private agencies that must bear their own costs of business. This bill amounts to unfair trade practices, discriminatory regulation and in some aspects denies due process to the agency's public sector competitors.


"B" Jarvi

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April 5, 2004

The Honorable Peggy Wilson, Chair
House Health, Education and Social Services Committee
Alaska Capitol, Room 104
Juneau, Alaska 99801-1182

RE: HB 427 (Anderson)—Support

Dear Chair Wilson:

On behalf of the AARP members in Alaska, we recommend that you and your colleagues on the House Health, Education and Social Services Committee support HB 427, authored by Representative Tom Anderson.

AARP believes that all states should enact guardianship and conservatorship laws that incorporate procedural and legal due process safeguards for persons in need of protective measures.

Alaska should:

- require all guardians to receive adequate training and information about their responsibilities and requirements;
- mandate certification of guardians who serve multiple, unrelated incapacitated people (certification programs should include training, testing and accountability requirements);
- make guardians' financial exploitation of wards a criminal offense and hold guardians personally liable to wards for misappropriated funds or assets;
- address state courts' authority to make guardianship determinations when potential wards have ties to more than one state; and
- codify, simplify and clarify trust laws by modeling them on the Uniform Trusts Code promulgated by the National Conference of Commissioners on Uniform State Laws.

HB 427 represents the best current thinking of many organizations concerned with establishing the "best practices" of guardianship into state statute. It is a complex area that has long warranted attention by the Legislature.

AARP recommends an "AYE" vote on HB 427.

Should you have any questions about our position, please feel free to contact Marie Darlin (907.586.3637), Coordinator of the AARP Capital City Task Force; Patrick Luby (907.762.3314), AARP Legislative Representative; or me (907.245.5259).

Thank you for your consideration.

Sincerely,



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Patrick Luby

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OFFICE OF PUBLIC ADVOCACY

FRANK MUREOWSKI, GOVERNOR

908 W. 5TH AVE., SUITE 515
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-3500
FAX: (907) 269-3533

April 6, 2004

The Honorable Peggy Wilson, Chairwoman
House Committee on Health,
Education & Social Services
Alaska State Legislature

RE: House Bill 427, An Act relating to guardianships and conservatorships

Dear Representative Wilson,

Thank you for hearing House Bill 427 in the HESS committee. It is my firm belief that this legislation is critical to ensuring the safety and well being of vulnerable adults under the supervision of guardians and conservators. It is my further belief that this legislation is a prerequisite to the establishment of private guardians and conservators in Alaska to serve our State's growing population of vulnerable and incapacitated adults. Again, thank you for addressing this legislation.

Having said that, I need to address certain comments and testimony given at the last committee meeting that may have led to some misunderstandings.

First, this legislation would result in the regulation of professional guardians and conservators – those who are in the *business* of providing guardianship and conservatorship services. It would not impact family members who are performing this role for their disabled family members. It would also exempt financial institutions who are performing this role, since they are sufficiently regulated under current law. The only provision in this legislation that imposes a new requirement on family guardians is proposed AS 13.26.145(e), which states that when appointing a relative or friend as guardian the court shall require that the proposed guardian complete one hour of mandatory education on the basics of guardianship. OPA would provide this training at no cost to that individual.

There were also several comments made about the Public Guardian section of the Office of Public Advocacy (OPA) that must be corrected. OPA does not charge \$40 an hour for guardianship services as was represented by a witness from Fairbanks. OPA charges monthly fees for conservatorship and guardianship services which are set forth in regulation and are based upon the total value of a client's liquid assets. Forty dollars (\$40) per month is charged to clients who have liquid assets of less than \$10,000. Above that, a sliding scale is applied. In no case shall the monthly fee exceed \$145. The great majority of OPA's public guardian clients have

The Honorable Peggy Wilson
April 6, 2004
Page 2

extremely limited resources and are either charged \$40 per month for our services or receive fee deferrals and/or fee waivers as a result of financial hardship.

It was also suggested that OPA's public guardians should fall within the coverage of this legislation. This suggestion ignores the fact the OPA's public guardians are State employees and are regulated by the processes of State government. OPA's guardians are subject to oversight by the Public Advocate, who reports to the Commissioner of Administration. Both the commissioner and myself serve at the pleasure of the governor. We are also subject to oversight by the Legislature. Moreover, assuming for purposes of argument that a public guardian were to take financial advantage of a client, that client would be protected and the risk management function of the Department of Law would indemnify all client losses. Finally, and most importantly, OPA's guardians have demonstrated their proficiency and expertise in providing services to our clients. The legislation before the committee would require all private guardians to register with the National Guardianship Foundation which requires the passage of a written guardian exam. Currently, all public guardians have passed this exam and are registered with the National Guardianship Foundation. Four public guardians have achieved advanced certification by passing the National Guardianship Foundations' master guardian exam. In short, OPA's guardians currently meet the professional registration requirements called for in this legislation, and OPA's client's have the financial protections imposed by the bill on private guardians.

The witness from Fairbanks also stated that the court visitors should be included in the coverage of this legislation. This statement evidences a lack of understanding of the role of the court visitor. In short, the court visitor is an uninterested third-party who provides an objective analysis to the court on whether a guardianship should be approved. The court visitor is responsible for arranging evaluations of the person subjected to a guardianship petition (the respondent). In addition, the visitor is charged with interviewing the petitioner and the respondent, friends, family, care providers, and others who may have information on the abilities and or disabilities of the respondent. The court visitor then prepares a written report with recommendations to the court in advance of the scheduled court hearing. Most importantly, however, while the court visitor has access to the respondent's financial records as provided in the court order, they do not have access to the financial resources of the protected person. Therefore, there is no reason to impose a bonding requirement as was suggested by the witness from Fairbanks. Finally, while the Legislature chose to transfer the court visitor function from the court system to OPA, court visitors are independent contractors and are not employees of OPA or any other state agency. I would not object to this function being returned to the court system.

It was implied that the OPA is in league with the court visitors to steer cases towards the Public Guardians. This is not the case. The public guardians at OPA have high caseloads and OPA has no incentive to increase the number of cases they are now carrying. Cases are regularly reviewed - as required by statute - to determine if there is a family member, friend, or private

OPA's guardians do not currently undergo criminal background checks as called for in the legislation. However, upon applying with the State, applicants must identify and explain any criminal history. OPA is currently considering imposing criminal background checks on its public guardians.

The Honorable Peggy Wilson
April 6, 2004
Page 3

organization who can assume the role of guardian or conservator. OPA is guardianship resource and appointment of last resort. To the extent our clients can be served by family or private entities, OPA aggressively seeks these alternatives.

It was also suggested that OPA regulates private guardians. This is not accurate. OPA provides public guardians where no alternative is available. We have no regulatory authority over private guardians. Having said that, OPA does have an obligation to ensure that persons of competence and training serve our clients and other vulnerable Alaskans.² This goal would be served by passage of House Bill 427.

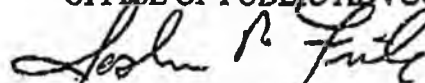
Finally, the private guardian from Fairbanks also made representations regarding the process by which this bill was drafted. While no doubt well-intentioned, her comments demonstrate a misunderstanding of that process. This legislation resulted from the collaborative participation from a number of individuals and agencies concerned about guardianship reform. They included Adult Protective Services, The Alaska Trust Company, the Alaska Court System, the Office of the Long Term Care Ombudsmen, the Office of Public Advocacy, the Disability Law Center, private attorneys, court visitors, and private professionals providing guardianship and conservatorship services. Mr. Dave Shady, the principal at PGSC, was also invited to participate.

In closing, I would only state that it is not possible to respond in this letter to all of the verbal and written comments made by the witness from Fairbanks. I am happy to make staff and myself available to address any concerns or issues committee members may have regarding her testimony, or any other concern with this legislation.

Thank you again for hearing this important legislation.

Sincerely,

OFFICE OF PUBLIC ADVOCACY


Joshua P. Fink
Public Advocate

² To this end it is also accurate to state that the former director at OPA had a hand in pointing out to the court concerns about suspected irregularities and mismanagement at CAPA, a private guardian, who is now the subject of ongoing litigation. As such, I would prefer not to comment. However, I will make myself available to legislators who may wish to discuss this matter, and would note that the case was covered extensively in both Anchorage and Fairbanks' newspapers.

House Bill 427 Testifiers

- Josh Fink, Office of Public Advocacy - OFFNET
- Jim Parker, Office of Public Advocacy – OFFNET
- Suzanne Armstrong, Long-term Care Ombudsman's Office – Anchorage LIO
- Betty Wells, Ak State Association for Guardianship and Advocacy – ANC LIO
- Sharon Wells, Private Professional Guardian – Anchorage LIO
- Bob Tenzenik, Family Guardian – Anchorage LIO

HB

428

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 20, 2004
Re: CS Request

Please create a final draft House Judiciary Committee Substitute for work order # 23-LS1520\D, HB 428, incorporating the attached four amendments (Amendments # 1, 2, 4 and 5). The bill was passed out of committee on Friday.

If you have any questions, please call me at 4990. Thank you!

The information attached to this memo is **CONFIDENTIAL**, an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 428

Amendment #1 - PASSED
by Rep. Gruenberg

Page 2, Line 7
Delete (d) entirely.

Conceptual

HB 428

Amendment # 2 - PASSED

by Rep. Gruenberg

Page 2, Lines 8-10

Delete (e)

And on page 1, Lines 8 and 11,

After "\$1,000" Insert

" plus costs and reasonable attorney fees
as permitted by AK.R. Civ. Pro. 79 and 82"

(Please phrase this however it is standardly
written in our statutes)

HB428
Amendment #4 - PASSED
by Rep. Gruenberg

Page 2*, Line 1:
Delete "by first class mail"

Page 1, Line 14:
After "send"
Insert ", by first class mail,"

HB 428

Amendment #5 - PASSED

by Rep. Gruenberg

Page 2, Line 5

Alter "solicited"

Delete "that"

Insert "a"

HOUSE BILL NO. 428

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES MEYER, Wilson

Introduced: 2/4/04

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to civil liability for acts related to obtaining alcohol for persons under
2 21 years of age or for persons under 21 years of age being on licensed premises."

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

4 * Section 1. AS 04.16 is amended by adding a new section to read:

5 Sec. 04.16.065. Civil penalty for violations of AS 04.16.060. (a) A person
6 who has attained 18 years of age, or an emancipated minor, who violates
7 AS 04.16.060 is, in addition to any criminal penalty provided by law, liable in a civil
8 action to the licensee for a penalty of \$1,000.

9 (b) A person having legal custody of an unemancipated minor who solicits
10 another person to violate AS 04.16.060 is liable in a civil action for a penalty of
11 \$1,000 to the licensee from whom the other person purchased, ordered, or received an
12 alcoholic beverage in violation of AS 04.16.060.

13 (c) (It is a condition precedent) to maintaining an action under this section that
14 the owner or seller of the merchandise send ^{by first class mail,} to the defendant a notice demanding the

1 relief authorized ~~(by first class mail)~~ to the defendant at the defendant's last known
2 address 15 days or more before the action is commenced. The Department of Law
3 may adopt regulations prescribing the form of this notice. It is not a condition
4 precedent to maintaining an action under this section that the person who violated
5 AS 04.16.060 or solicited ^{as} that violation was charged or convicted under any statute or
6 ordinance.

7 (d) Judgments, but not claims, arising under this section may be assigned.

8 (e) The liability of a person for damages and penalties under this section is in
9 addition to liability for an award of reasonable attorney fees that may be made to the
10 prevailing party in a civil action under Rule 82, Alaska Rules of Civil Procedure.

11 (f) In this section, "emancipated minor" means a minor whose disabilities have
12 been removed for general purposes under AS 09.55.590.

wording

HB 428

Amendment #3 - ~~WSTHRAWS~~
by Rep. Greenberg

Page 1, Line 6

Delete "who has attained 18 years of age,
or an emancipated minor,"

~~HB 428~~

Case

HB 428

Amendment - not offered

~~The pro~~

~~At least 75% of the process~~

Any time a licensee receives a

fine under this section, ~~it~~ it must confirm on

a form required by the Alcohol & Beverage Control

Board that, after costs of recovering the fine,

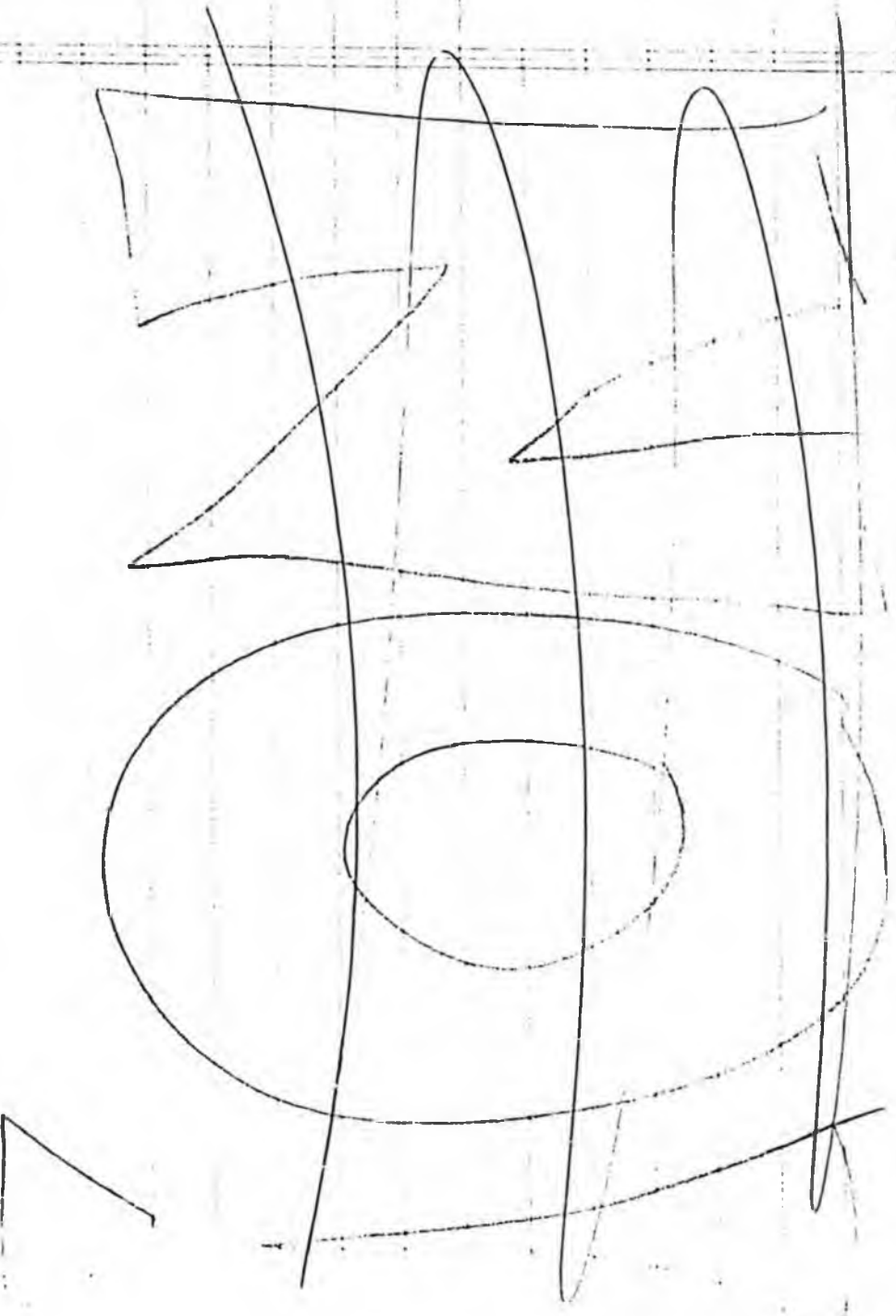
at least 75% of the proceeds of the

fine will be used for alcohol abuse education

or treatment efforts. Or that for the

licensee must summarize what efforts the

fine will fund.



FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 428
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Civil Penalty/Underage Alcohol BRU Alaska Court System
Purchases Component Trial Courts
 Sponsor Representative Meyer
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 The court system does not anticipate any fiscal impact from the passage of HB 428.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 2/24/04 9:46 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 2/24/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: HB 428
 (H) Publish Date: 2/26/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act related to civil liability for acts related to RDU Statewide Support
obtaining alcohol for persons under 21 years... Component ABC Board
 Sponsor Representative Meyer
 Requester H. Labor and Commerce Component No. 2690

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
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 (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact is anticipated by the Department of Public Safety.

Prepared by: Douglas B. Griffin, Director Phone 269-0351
 Division ABC Board Date/Time 2/24/04 9:35 AM
 Approved by: Commissioner William Tandeske Date 2/24/2004
 Agency Department of Public Safety



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: March 1, 2004

TO: Representative Lesil McGuire
Chair, House Judiciary Committee

FROM: Representative Kevin Meyer *KM*

RE: HB 428 Civil Penalty: Underage Alcohol Purchases

At your earliest convenience, please schedule HB 428 Civil Penalty: Underage Alcohol Purchases for a hearing in the House Judiciary Committee.

Under HB 428, an adult who orders or receives an alcoholic beverage, for the purpose of selling, giving, or serving it to a person under the age of 21 years, can be civilly liable to the licensee for a penalty of \$1000. Likewise, the parent or legal guardian of a minor that solicits an adult to violate AS 04.16.060, can be civilly liable for a penalty of \$1000 to the licensee from which the alcoholic beverage was purchased, ordered or received.

Thank you for your time and consideration of this matter.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HOUSE BILL 428

“An Act relating to civil liability for acts related to obtaining alcohol for persons under 21 years of age or for persons under 21 years of age being on licensed premises.”

Under House Bill 428 Civil Penalty: Underage Alcohol Purchases, an adult who orders or receives an alcoholic beverage, for the purpose of selling, giving, or serving it to a person under the age of 21 years, can be civilly liable to the licensee for a penalty of a \$1,000. Likewise, the parent or legal guardian of a minor that solicits an adult to violate AS 04.16.060, can be civilly liable for a penalty of \$1,000 to the licensee from which the alcoholic beverage was purchased, ordered, or received.

There is nothing new about misguided adults buying alcohol for minors. Often, minors ask a stranger outside of a liquor store to buy alcohol.

Alcohol remains a leading drug problem among our nation's young people, with earlier and earlier initiation of consumption. Underage drinking is associated with the leading causes of death among young people, including car crashes, murder, and suicide. HB 428 will provide an economic deterrent for adults and for minors to abstain from purchasing or soliciting the purchase of alcohol.

Currently, the Municipality of Anchorage has a similar ordinance to HB 428 in place. The money that is collected by the licensees goes toward alcohol education and intervention programs, as well as to the employees of the licensee as incentives for paying close attention to all customers.

The method of deterrent that HB 428 will provide increases the awareness of the overall cost that alcohol and underage drinking has on our communities. HB 428 provides an economic incentive for employees of liquor stores and bars to pay close attention to customers, for minors to refrain from soliciting alcohol from adults, and for irresponsible adults to think twice before providing alcohol to a minor upon request.

Last Updated: February 11, 2004



FOOD & SPIRITS

P.O. Box 111369
11321 Old Seward Hwy
Anchorage, AK 99511
907 336-7177

2/13/04

Representative Kevin Meyer
State Capitol, Room 513
Juneau, AK 99801

RE: HB 428

Dear Representative Meyer:

This letter acknowledges my full support of House Bill 428. It is legislation that will have a long term positive affect not only in our communities but for the hospitality industry as well.

By holding adults of legal age to purchase alcohol responsible for providing for minors is legislation the industry will gladly enforce. I am always surprised when adults claim these actions are harmless. In banquet situations I have seen parents give children alcohol such as champagne and am obligated to tell them their actions on-premise are illegal. This legislation will empower licensees to enforce the law and make all adults think twice before passing a glass of alcohol to a minor or in any public situation for that matter.

I see HB 428 as deterrence to providing alcohol to minors, educational to the public and an incentive for licensees to get the word out.

Sincerely,

Chuck Edwards
Manager



MADD
Activism · Victim Services · Education™

Anchorage Chapter
4105 Turnagain Boulevard, Suite A • Anchorage, AK 99517
(907) 562-6890/Fax (907) 562-6896
Email: info@maddalaska.com
Visit our Web Site: www.maddalaska.com

Our Mission is to stop drunk driving, support the victims of this violent crime and prevent underage drinking

February 24, 2004

Representative Kevin Meyer
Alaska State Legislature
Juneau, AK 99811

RE: HB 428

Dear Representative Meyer,

On behalf of the Anchorage Chapter of Mothers Against Drunk Driving, I would like to express our support for HB 428 statewide civil penalties for Underage Alcohol Purchases.

This has been a successful approach for the Anchorage Municipality and will discourage underage alcohol consumption throughout the state.

Sincerely,

Marti Greeson

Marti Greeson
Executive Director



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 10, 2004

Representative Kevin Meyer
State Capitol, room 513
Juneau, Alaska 99801

Re: House Bill 428
"An Act relating to civil liability for acts related to obtaining alcohol for persons under 21 years of age or for persons under 21 years of age being on licensed premises."

Dear Representative Meyer:

The MADD Alaska Chapters, *Anchorage, Fairbanks, Juneau and Mat-Su*, support House Bill 428.

In order to further limit youthful involvement in alcohol-related crashes, MADD advocates criminalization of actions by adults who provide for minors.

MADD believes there should be more effective and stringent enforcement of the minimum drinking age law, by means of administrative, civil, and criminal measures, to further limit illegal underage access to alcohol and thus reduce youthful involvement in alcohol traffic crashes.

House Bill 428 supports Community Policing which is a philosophy that promotes and supports organizational strategies to address the causes and reduce the fear of crime through problem-solving tactics and community-police partnerships.

HB 428 provides an incentive for liquor stores to prevent irresponsible adults from furnishing alcohol to minors and allows them to be part of community policing.

Sincerely,

Cindy Cashen

Executive Director

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Anchorage Daily News

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Brown Jug aims to turn ID busts into life lessons

CLASS: Liquor retailer creates alcohol awareness program.

By LISA DEMER

Anchorage Daily News

(Published: December 8, 2003)

One evening last fall, a man tried to buy wine coolers, vodka and Mike's Hard Lemonade for a couple of 15-year-old girls. The head of security at Brown Jug made a citizen's arrest, handcuffing the buyer. Police came. The man was busted, and so were the girls.

That may seem a fitting end to the store's role. But Brown Jug, one of the state's biggest liquor retailers, has a reputation for being extra aggressive in preventing sales to kids as well as adults who buy for them.

The company has pursued \$1,000 civil claims against people who try to buy booze illegally. Now the retailer wants to transform its campaign against underage drinking into an effort that not only stings the wallet but also convinces youths not to drink.

Under the new approach, anyone who goes through a new alcohol awareness program crafted for Brown Jug will get a break on the civil penalty. The store will seek \$300 instead of \$1,000.

"We're trying to educate on the responsible approach to the product," said Ed O'Neill, one of Brown Jug Inc.'s owners.

The program isn't free. Participants will have to pay another \$290 for the main course, 15 to 16 hours of classroom sessions led by Akeela Inc., a private substance abuse prevention and treatment agency.

Two other agencies are joining in. Standing Together Against Rape will talk to participants about sexual assault and its connections to alcohol.

Participants also must listen to people whose lives have been upended by drinking. The panel, put together by Mothers Against Drunk Driving, includes people hurt by drunken drivers and those on the other side, inmates serving time for killing someone while driving drunk. There's a separate \$35 fee for that panel.

Other retailers are starting to be more diligent about checking IDs.



This fake ID is made from a scanned document that was altered and then laminated over the original ID. (Photo by Erik Hill / Anchorage Daily News)



Brown Jug vice chairman Ed

"But no one is in Brown Jug's league," said Doug Griffin, director of the state Alcohol Beverage Control Board. "It shows good leadership on behalf of this company and this industry to do the right thing."

O'Neill hopes more retailers and bars follow suit.

Brown Jug pushed through a local Anchorage ordinance five years ago that allows liquor stores and bars to seek civil penalties against youths who walk in without a parent or guardian. Big yellow signs on Brown Jug's front doors warn kids to stay away. In 2001, the provision was put into state law.

The civil measure is needed as both deterrent and punishment because prosecutors rarely pursue fake ID cases, said O.C. Madden III, Brown Jug's manager of personnel and loss prevention.

Since 1998, Brown Jug has demanded \$1,000 payments from more than 900 underage youths who tried to buy something -- from beer to cigarettes to Coke. Those not trying to buy booze are likely just testing the store, Madden said. Not all have paid, but many have, Madden said. The civil cases now fill more than 20 binders.

Last year, the Anchorage Assembly approved a measure to allow liquor establishments to seek similar civil penalties against adults who buy for kids, and the kids who are part of the scheme.

Those cases are more often prosecuted, but the consequence may be a small fine and community work service. So, under this provision, Brown Jug has sought \$1,000 civil payments from another 120 kids and adults.

Madden has noticed the adults trying to buy for kids often fit in one of three categories: older friends or siblings, public inebriates or registered sex offenders. Over the Thanksgiving weekend, a 34-year-old man with a record of sexually abusing a minor was caught at a Brown Jug store trying to buy beer and liquor for three youths, including a 17-year-old boy, according to Brown Jug.

Dozens of confiscated IDs that Madden keeps in his office show how kids try to trick the clerks. Some are homemade, sloppy and obvious. One kid scanned his real license into a computer, fiddled with the dates, and glued a printout of his reworked card atop the laminate of the real one.

But other cards are bought through the Internet as slick renditions. Fake IDs from New Jersey have been especially popular lately. Kids also have schemes to get IDs from the state Division of Motor Vehicles, Madden said. They may use someone else's birth certificate, especially an older sibling's, he said.

The bust involving the two 15-year-old girls prompted Brown Jug to add the education component. The girls probably didn't realize how close they were to real trouble, Madden said. The man had intended to take them to a drinking party where they would have been the only girls.

O'Neill put out the word about the new education program in a recent e-mail to dozens of community council activists, Assembly members and police officers. Some people replied to the group with praise, but at least one took issue with how the store rewards its clerks who catch minors.

A Brown Jug clerk who seizes an ID suspected of being fake gets \$20 from the store and another \$250 if the store wins a civil penalty or judgment, Madden said. The IDs are sent to the ABC board, where owners can collect them.

O'Neill displays confiscated IDs and 22 binders containing paperwork on 40 fake ID cases at company offices in Midtown Anchorage. (Photo by Erik Hill / Anchorage Daily News)

Click on photo to enlarge

The incentive doesn't sit well with Tim Stevens, who is active on the Huffman-O'Malley Community Council.

"I commend your desire to curb underage drinking but I do not care for your methods," Stevens e-mailed back to the group. "Seems to me its just another way of putting extra money in your employees pockets at the expense of the offenders parents."

But other people like the approach.

"This small monetary caveat (civil penalty/diversion program) is nano-scale in comparison to a life being saved," Carol Holden, an officer on the Taku-Campbell Community Council, wrote in an e-mail reply. "We need to make winners out of those who support the laws. Half of the solution is reward, the other is penalty."

"As a taxpayer, I am sick and tired of no one taking any responsibility for their action and we are suppose to keep paying for more police to enforce the laws," wrote Bonnie Jack, an aide to Assemblywoman Fay Von Gemmingen. "I say, 'Good Job, Brown Jug!'"

People are just now signing up for the first of the new alcohol education courses. Adults trying to buy for kids will spend a Friday evening and all day Saturday in alcohol class. Those under 21 will spend four weeknights.

The classes are revamped from the Prime for Life course that middle and high school students already can take after being suspended for drugs or alcohol to get back to school more quickly.

"We dispel myths. We take away the shame and guilt and trappings that go with this whole issue," said Diane Ogilvie, director of prevention, education and training at Akeela Inc.

"It is designed to require you to be very honest about yourself."

Daily News reporter Lisa Demer can be reached at ldemer@adn.com and 257-4390.

[Print Page](#)

[Close Window](#)

By Jan Goehring

Lots of kids party, and alcohol is easy to get," says Jane McKnight, a California high school junior.

"In our class, we have a 'go to' guy for alcohol. He can't even drive yet, but he looks older and knows a store where they don't card him. Some kids have fake IDs, some get alcohol from their parents, and others just ask an adult going into a store to buy it for them," she adds. Jane thinks her school is about average when it comes to drinking behavior.

Research supports her comments. Nearly 50 percent of teens have had at least one drink by the time they reach eighth grade, and 20 percent say they have been drunk, according to the National Institute on Alcohol Abuse and Alcoholism.

Approximately 30 percent of 12th graders "binge" drink—had more than five drinks at one time in the last two weeks. More young people drink than use other drugs or smoke tobacco. "The fact is, alcohol is the illegal drug of choice for kids," says Wendy Hamilton, national president of Mothers Against Drunk Driving.

So is this just a rite of passage in a culture where alcohol is the norm among adults or is it a problem demanding attention? The consequences of underage drinking can be devastating. Teens tend to drink to excess when they do drink. Traffic crashes are one of the most obvious dangers, with alcohol involved in more than one-third of youth traffic deaths. Underage drinking also is linked to suicide, educational difficulties, violence and sexual activity.

Myriad laws, regulations and programs are in place to prevent underage consumption. Since Congress established the drinking age as 21 in 1984, statistics improved, but kids still drink. It's a problem that seems to elude solutions.

THE ADULT CONNECTION

A recent report, "Reducing Underage Drinking: A Collective Responsibility," from the National Academy of Sciences (NAS), offers recommendations. Mandated by Congress,

Jan Goehring covers alcohol sales and licensing issues for NCSL. Jeanne Kaufmann, who works on adolescent and school health, also contributed to this article.

LOTS OF KIDS DRINK...

Keeping teens away from alcohol is tough, but not impossible.

the study acknowledges that kids get alcohol from adults—either directly or indirectly—and efforts to curb the problem need to focus on adults and society at large.

"We have to find effective ways to protect our nation's youth while we respect the interests of responsible adult consumers of alcohol," says Richard Bonnie, director of the Institute of Law, Psychiatry and Public Policy at the University of Virginia and chair of the committee that wrote the report.

"We are heartened to see that the report recognizes the important role parents play in keeping alcohol out of children's hands," says Maria Tildon of the Century Council. The council, funded by distilled spirits companies, promotes responsible decision-making about alcohol, focusing on drunk driving and underage drinking problems through a variety of programs.

Recommendations in the NAS report include national adult and youth-oriented media campaigns, partnerships between industry and private and public organizations to prevent the problem, and a reduction in how much drinking is portrayed in movies and music videos.

It also calls for reducing the amount of alcohol marketing aimed at kids. The Center on Alcohol Marketing and Youth argues that high schoolers are overexposed to alcohol advertising and influenced by its youthful themes. Jeff Becker, president of the Beer Institute, a national trade association, opposed this recommendation during congressional testimony on the report last fall. He cited a Roper Youth Report poll that shows that parents are the No. 1 influence on their children's decision whether to drink.

John Kaestner of Anheuser-Busch Companies agrees. "A teen's exposure to—or awareness of—beer advertising has nothing to do with what can help that teen make good decisions about respecting the law and himself when it comes to underage drinking," he says.

The Roper report lists a number of state policy recommendations, as well. For example, it urges states to enhance existing laws, includ-

ing strengthening compliance checks in stores to make sure they follow drinking-age laws. It also encourages states to improve efforts to prevent and detect the use of fake IDs require all sellers and servers of alcohol to complete training for checking IDs and spotting fake ones, implement enforcement programs to deter adults from purchasing for minors and establish a keg registration system.

All states prohibit the sale of alcohol to youth and have zero tolerance laws for those under age 21 who drink and drive.

Illinois recently adopted a law that allows someone who is injured by a drunk or impaired minor to sue the adult who supplied the alcohol.

"We wanted to send a message that it is not

Continued on Page 22



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Continued from Page 20

UNDERAGE DRINKING STATISTICS

- ◆ 28.5 percent of those aged 12 to 20 reported drinking alcohol in 2001.
- ◆ Among young adults aged 18 to 25 years, 22.8 percent drove under the influence of alcohol in the last 12 months.
- ◆ More than 40 percent of those who begin drinking before age 13 will develop alcohol abuse or dependency problems at some point in their lives.
- ◆ About 12 percent of eighth graders, 22 percent of 10th graders and 29 percent of 12th graders report binge drinking (five drinks in a row) in the last two weeks.
- ◆ Rates of binge drinking and heavy alcohol use are higher among males than females.
- ◆ Young adults aged 18 to 22 enrolled full time in college were more likely than their peers not enrolled full time to report binge and heavy drinking.

Sources: Leadership to Keep Children Alcohol Free; National Household Survey on Drug Abuse, 2000, 2001; U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

OK for adults to give alcohol to kids," says Illinois Representative Kevin Joyce, the bill's sponsor.

Kansas Senator Kay O'Connor sponsored a measure in 2003 to create the misdemeanor crime of hosting underage drinkers.

The bill was sparked by the death of a teen who crashed his car after leaving a beer party at a house where the parents were home.

"Parents make their kids popular by allowing these drinking parties," says O'Connor. The measure passed the Senate and carried over to the House this session.



REPRESENTATIVE
 KEVIN JOYCE
 ILLINOIS



SENATOR
 KAY O'CONNOR
 KANSAS

TURNING TO TAXES

Increasing excise taxes on alcohol, especially beer, was another NAS recommendation. The rationale is that kids would no longer be able to afford to buy beer, and the revenue could be used to fund underage anti-drinking programs. Industry opposes this idea and cites research showing it won't work.

"It's ridiculous to think that hiking the price of a six-pack by 25 or 50 cents is going to stop a teenager intent on breaking the law," says Kaestner.

"What do you raise them to? When does it become cost-prohibitive for teens?" wonders Representative Joyce.

California teen Jane doesn't know what exactly should be done, but does know kids drink a lot and sometimes "it's scary."

Article for *TOAST Magazine*
Community News Release
February 5, 2004

Third Party Purchasers

The disheveled man in his fifties looked a little out of place at the counter with the 3 six-packs of maltalternative beverages. While the clerk suspended the sale, a look outside the building confirmed the presence of a van containing three nervous teenagers. After a quick interview with security personnel, the three admitted giving a public inebriate \$50 to purchase the beverages for them. All four were arrested and turned over to the police, who took the adult into custody, and released the minors to their parents after issuing them citations. The minors explained that this particular inebriate routinely made himself available to purchase alcohol for the local high school crowd.

There is nothing new about misguided adults buying alcohol for minors, but what might surprise you is how often minors are able to obtain alcohol from a third party, and who the minors are asking to buy for them. Over the last several week, Mothers Against Drunk Driving (MADD), in cooperation with the Anchorage Police Department, has conducted a survey to determine how often adults will buy alcohol for obviously underage total strangers. While the survey has just begun, 40% of the Anchorage adults approached by the teens agreed to buy for them. A recent survey performed by the Los Angeles Police Department produced similar results, 46% of the adults approached agreed to buy for the minor. As greater pressure is brought to bear on sources of fraudulent identification, the national trend seems to be that more and more minors are turning to adults to obtain alcohol.

Brown Jug has taken an aggressive approach in dealing with third party purchases for minor by conducting surveillance with trained security personnel to arrest minors and adults who violate AS 04.16.060. It is a criminal offense in Alaska for a minor to solicit an adult to buy alcohol for the minor, and for the adult to order or receive an alcoholic beverage from a licensee for the purpose of giving it to a minor.

Since initiation of the third party interdiction program, Brown Jug security personnel have made over 120 arrests. This program has also resulted in arrests for other criminal conduct, such as felony drug charges, weapons charges, as well as parole violations. Store level employees are trained to recognize the potential signs of a third party purchase, but are not authorized to detain the customer. If the employee believes the alcohol is destined for a minor they are to deny the sale and contact security if necessary.

In analyzing the arrests made, we have identified three primary groups of adults who purchase for minors. The first group is made up of older siblings or friends of the minor who believe that they are doing their underage friend a favor. The second group is made up of public inebriates. Minors have learned that the "Will Work for Food" crowd is easily persuaded to purchase alcohol. Disturbingly, the third group is made up of sex offenders. When we interview minors we find that they are shocked to learn the criminal history of the person they solicited. Approaching strangers and public inebriates for alcohol is far more dangerous than they think. More than one arrest has resulted in profuse appreciation from parents who realized what very likely was about to happen to their daughter.

Article for *TOAST Magazine*
Community News Release
February 5, 2004

Anchorage Municipal Ordinance 10.50.23 provides that minors and adults who violate AS 04.16.060 are liable to the licensee for a civil penalty of \$1000. In partnership with Akeela House, MADD, and Standing Together Against Rape (STAR), Brown Jug is waiving \$700 of the civil penalty if the participants successfully complete the educational classes offered. Akeela provides all case management, so the time required by the licensee is minimized. Essentially, the licensee is responsible for making a demand for the \$1000 civil penalty by first class mail, signing up the participants when they respond, and forwarding the participant name to Akeela. The case manager at Akeela is responsible for scheduling participants and coordinating classes with other agencies. On third party cases, the rate of participation have been impressive; virtually all of the adults and minors contacted, signed up immediately, the rest committed to sign up on a specific date.

What are the signs that a third party purchase may be occurring?

1. Minors in vehicles parked around the side of the building, when parking is available directly in front of the door;
2. The adult in the store is buying several different products; and
3. The adult denies anyone is in his or her vehicle.

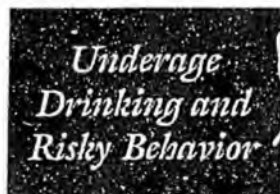
What steps can be taken to prevent third party purchases?

1. The policy at Brown Jug is that everyone in a customer's party must be 21 years old, or be the child, spouse, or legal ward of the customer. This includes persons in the customer's vehicle.
2. Consider installing outdoor cameras to monitor blind spots outside the store. This gives the clerks at the registers the ability to scan the parking lot without having to leave the register.
3. Educate employees to be vigilant and to look out for suspicious transactions.

O. C. Madden III
Personnel/Loss Prevention Manager
Brown Jug, Inc.



Making the Link



A national survey reported that 13 percent of youths, aged 12 to 17, had at least one serious alcohol problem related to drinking in the past year.¹

Underage drinking is linked to an increase in risky sexual behavior.

- According to a national survey of sexually active young people, 12 percent of teens aged 15 to 17 reported having unprotected sex as a result of having been drinking or using drugs. In addition, 74 percent reported that because of their substance use, they had "done more" sexually than they had planned.²
- Teenage girls who are heavy drinkers are five times more likely than nondrinkers to engage in sexual intercourse and a third less likely to use condoms, which can result in pregnancy and sexually transmitted diseases.³

Underage drinking is linked to an increased risk of fatalities and unintentional injuries.

- In 2000, youths aged 12 to 17 who reported past year alcohol use (19.6 percent) were more likely than youths who did not use alcohol (8.6 percent) to be at risk for suicide.⁴
- Young drinking drivers are involved in fatal crashes at twice the rate of drivers aged 21 and older.⁵
- Early age of onset drinking may be an indicator of increased risk of alcohol-related injury. Those who start drinking before age 14 are 12 times more likely to be injured while under the influence of alcohol sometime in their life.⁶

Injured While Under the Influence of Alcohol According to Age of Drinking Onset



No. of Respondents
 130 845 1507 3155 2861 5693 2213 2078 7315

P<.001 for comparison of association between age of drinking onset and percentage engaging in each outcome

Source: Hingson, et al. 2000.

Early initiation is linked to future alcohol use and dependency problems.

- According to a longitudinal study of students in three States, middle school students were almost three times more likely to use alcohol if they had previously used alcohol in elementary school.⁷
- If drinking is delayed until age 21, a child's risk of serious alcohol related problems is decreased by 70 percent.⁸

Initiative Partners
 National Institute on Alcohol Abuse and Alcoholism (NIH)
 The Robert Wood Johnson Foundation
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 Office of Juvenile Justice and Delinquency Prevention (DOJ)
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 National Highway Traffic Safety Administration (DOT)

¹ Substance Abuse and Mental Health Services Administration, National Household Survey on Drug Abuse Population Estimates 1998, Rockville, MD: U.S. Department of Mental Health and Human Services, 1999.
² Kaiser Family Foundation. Survey Snapshot: Substance Use and Risky Sexual Behavior: Attitudes and Practices Among Adolescents and Young Adults. Menlo Park CA: The Henry J. Kaiser Foundation, 2002.
³ The National Center on Addiction and Substance Abuse at Columbia University. Substance Abuse and the American Woman. New York: Columbia University, June 1996.
⁴ Office of Applied Studies. Substance Abuse and Mental Health Services Administration. NHSDA Report: Substance Use and the Risk of Suicide Among Youths. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2002.
⁵ National Highway Traffic Safety Administration (NHTSA). 2000 Youth Fatal Crash and Alcohol Facts. Washington, DC: US Department of Transportation, 2001.
⁶ Hingson RW, Heeren T, Jamaka A, et al. Age of drinking onset and unintentional injury involvement after drinking. JAMA 284(12):1527-1533, 2000.
⁷ Wilson N, Battistich V, Syme L, et al. Does elementary alcohol, tobacco, and marijuana use increase middle school risk? J Adolesc Health 30(6):442-447, 2002.
⁸ Grant BF, Dawson DA. Age at onset of alcohol use and association with DSM-IV alcohol abuse and dependence: Results from the National Longitudinal Alcohol Epidemiologic Survey. J Subst Abuse 9:103-110, 1997.



Making the Link



Underage drinking is linked to violent and aggressive behavior.

According to a national survey, youths ages 12 to 17 who reported violent behaviors in the past year reported higher rates of past year illicit drug or alcohol use compared with youths who did not report violent behaviors.¹

Almost 12 percent of adolescent drinkers (about 1.2 million 7th – 12th graders) engage in alcohol-related physical fighting.²

A national study indicates that those who began drinking before age 14 were 11 times more likely to have ever been in a fight while drinking or after drinking than adults who began drinking after the age of 21.³

Youths ages 12 to 17 who had engaged in past month binge alcohol use were almost four times as likely to have carried a handgun in the past year compared with youths who had not engaged in binge drinking.⁴

Studies suggest that boys who drink are prone to fighting and sexual aggression.

In one study, males were almost twice as likely as females to engage in alcohol-related physical fighting (15.6 percent of males and 8.0 percent of females).⁵

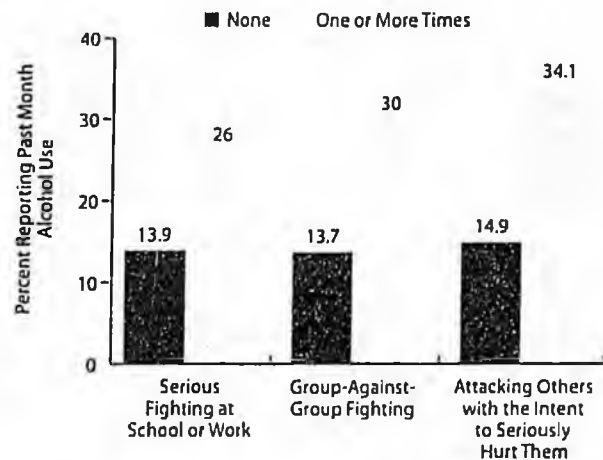
Among male high school students, 39 percent say it is acceptable for a boy to force sex with a girl who is drunk or high.⁶

Studies suggest that girls who drink are more likely to be victims of self-inflicted violence.

Among eighth grade girls who drink heavily, 37 percent report attempting suicide, whereas 11 percent of girls who do not drink report attempting suicide.⁷

Researchers estimate that alcohol use is implicated in one- to two-thirds of sexual assault and "date rape" cases among teens and college students.⁸

Percentage of Youths Aged 12 to 17 Reporting Past Month Alcohol Use, by Whether or Not They Participated in Violent Behaviors During the Past Year: 1999*



* Data presented differ from previously published data from the 1999 NHSDA because of corrections made to imputation procedures. Source: NHSDA Report, Youth Violence Linked to Substance Use, 2001.

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Substance Abuse and Mental Health Services Administration (DHHS)

National Highway Traffic Safety Administration (DOT)

¹ Office of Applied Studies. Substance Abuse and Mental Health Services Administration. NHSDA Report. Youth Violence and Substance Use, 2001 Update. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2002.
² Swahn MH. Epidemiology of alcohol-related fighting among adolescents. Paper presented at the 129th Annual Meeting of the American Public Health Association, October 23, 2001, Atlanta, GA.
³ Hingson R, Heeren T, Zakocs R. Age of drinking onset and involvement in physical fights after drinking. *Pediatrics* 103(4):872-877, 2001
⁴ Office of Applied Studies. Substance Abuse and Mental Health Services Administration. NHSDA Report: Youths Who Carry Handguns. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2001.
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⁶ Office of the Inspector General, U.S. Department of Health and Human Services. Youth and Alcohol: Dangerous and Deadly Consequences. Washington, DC: Health and Human Services, 1992.
⁷ Windle MA, Miller-Tutzauer C, Domenico D. Alcohol use, suicidal behavior, and risky activities among adolescents. *J Res Adolesc* 2(4):317-330, 1992.
⁸ Office of the Inspector General. Youth and Alcohol.



Making the Link

Underage Drinking and Access to Alcohol

Communities need to do more to reduce the availability of alcohol to youth.

Research shows that controlling alcohol availability is effective in preventing alcohol-related problems.¹

These facts on alcohol availability show the challenge communities face:²

- Where access to alcohol is greater, consumption is greater. When consumption rates are high, problems related to alcohol increase dramatically.
- Local communities have the power to control alcohol availability, but most do not make full use of their power and resources.

Questions the community should address to help develop policies.³

What are the problems related to underage drinking in the community?

- What is the extent of underage drinking? Which groups of young people are using alcohol?
- When and where does underage drinking take place?
- When adults serve alcohol in their homes to other adults, are nonalcoholic alternatives also offered? Are underage youth typically served alcohol in private homes?
- How is alcohol marketed in the community? Are young people the target of any of this marketing?

What are the law enforcement issues?

- How many establishments that sell alcohol are within walking distance in a typical neighborhood?
- Is the 21-year-old legal drinking age strictly enforced in the community?
- Do members of the community support the police in their efforts to enforce the drinking age?
- What happens to vendors who habitually sell alcohol to minors?
- What happens to minors who purchase alcohol? Is the infraction taken seriously?

Actions communities can take to prevent underage access to alcohol.

The Center for Substance Abuse Prevention found that six approaches show the most promise for effective prevention.⁴

- Prevent underage youth from obtaining alcohol.
 Establish laws and policies to govern alcohol distribution methods, "happy-hour" policies, minimum legal purchase age, alcohol taxes, and licensing of alcohol outlets.
- Promote and enforce responsible beverage service.
 Change the conditions of availability—for example, regulate outlet density, create restrictions on alcohol sales, and develop regulations for alcohol at special events and locations.
- Limit the hours and days of alcohol sales.
 Use a community-based approach—involve concerned citizens and community groups, law enforcement and public officials, in an effort to recognize the need to change local laws, regulations, and policies.

¹ Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention. Prevention Enhancement Protocols System (PEPS). Preventing Problems Related to Alcohol Availability: Environmental Approaches, Parent and Community Guide. Rockville, MD: Substance Abuse and Mental Health Services Administration, 1999.

² Ibid.

³ Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention. Underage Drinking Prevention Action Guide and Planner. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2001.

⁴ Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention. Prevention Enhancement Protocols System (PEPS).

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**American Medical Association
Office of Alcohol and Other Drug Abuse
Robert Wood Johnson Foundation National Alcohol Program Offices
515 North State Street, Chicago, IL 60610**

Policy Options for Reduction of Alcohol Problems (3/03)

Family and Home

- Family policy, traditions, values
- Parental monitoring (of alcohol use, availability, child activities, after school hours)
- Parental modeling
- Supervise and monitor teenage parties (ban alcohol)
- Responsible/social hosting
- Clear family rules consistently enforced
- Parent-child communications

Specific to Schools (K-12)

- Adopt comprehensive school policy (prevention, intervention, enforcement) and support services
- Support after school activities Ban alcohol on school property
- Ban alcohol at all school events
- Ban alcohol advertising and sponsorship of activities
- Ban product advertising on student clothing

Opportunities for Social/Normative Controls

Community

- Counter-advertising campaigns
- Correction of misperceptions
- Highlight/counter second-hand effects of drinking (violence, diminished performance, etc.)
- Youth Advocacy (training, mentoring)
- Peer interactions
- Consumer education/media literacy
- Assure access to and promote alcohol screening, intervention and treatment services
- Community Cues:
 - Visible, consistent, clear enforcement
 - Low bar density
 - Restricted or banned alcohol service, promotion and advertising at public events (fairs, festivals, celebrations) and on public property
 - Merchant voluntary refusals to sell child-oriented drinks; reduce in store ads and promotions/displays

Media (Community, campus, organizations)

- Ban alcohol advertisements
- Prioritize stories about alcohol issues
- Limit pro-alcohol use images
- Place warnings on alcohol advertisements
- Portray only responsible alcohol use
- Refuse advertising which promotes unsafe or underage drinking practices (e.g , happy hours and drink specials)

Law enforcement (Community, Campus)

- Check alcohol outlets for compliance with state and municipal licensing and safety codes
- Conduct compliance checks
- Prioritize enforcement against adults who illegally provide alcohol to youth
- Alcohol incident data collection, mapping and publication
- Educate public, key populations about problems, laws, enforcement measures

Stadiums and Arenas (Community, Campus)

- Restrict sales and consumption to certain areas
- Sell only low-alcohol or non-alcoholic beverages
- Cease alcohol sales before end of event
- Prohibit bringing your own alcohol
- Ban alcohol advertisements
- Alcohol-free tail gate areas
- Prohibit re-entry to stadium

Hotels/motels

- Restrict age of room renters
- Adult supervision of party rooms/facilities

Worksites

- Restrict alcohol at work events
- Discourage alcohol consumption during work day
- Prohibit use of alcohol as a bonus

Insurance and Health Care Policies

- Premium discounts for
 - Outlets that train servers
 - Individuals who sign waivers of coverage if they have alcohol-related crashes
- Coverage of alcohol screening, intervention and treatment services

Religious institutions

- Restrict access to alcohol at social events
- Prohibit use of alcohol as a prize
- Refuse alcohol sponsorship of events and activities

Public Policy Options

Access: Underage

- Maintain & enforce minimum legal drinking age (MLDA), purchase/possession age
- Minimum age of seller
- Keg registration
- Drivers' license enhancement
- Require age identification
- Restrict sales of classes of alcohol
- Social Host Liability
- Ban minors in bars
- Ban adult sales and/or provision to minors – social host liability

Access: How and When Alcohol is Sold

- Maintain Public/private control of alcohol distribution systems
- Restrict hours and days of sale
- Restrict or ban sales at community events
- Mandatory server training
- Require server licensing
- Commercial/Dram shop/server liability
- Stop state preemption of local control
- Ban Electronic/internet sales
- Licensing and permit controls/limits
- Ban drive-up sales and sales as gas stations
- Ban home delivery
- Reduce drink/container size and number of drinks per sale

Zoning: Where Alcohol is Consumed and Sold

- Lower outlet Density
- Restrict outlet Locations (near schools, parks, churches, residential areas)
- Monitor outlet types (restaurant, tavern, off-sale, etc.)
- Ban sale and consumption in parks, public spaces (including government buildings & property, sidewalks, fairgrounds) – conditional permits only for special events
- Ban sales, consumption in stadiums/ greatly restrict sales
- Pass noise, nuisance, public disturbances, public intoxication ordinances
- Lease requirements (e.g. party size limitations, landlord accountability)

Pricing

- Raise excise taxes
- Increase license fees and penalties
- Ban or limit happy-hour sales
- Ban drink-specials (2 for one, all you can drink, ladies night, etc.)

Advertising and Promotion

- Require and post visible warning signs and labels (health risks, DUI, caloric and alcoholic content)
- Restrict alcohol advertisements/signage (location, number, size, placement, visibility)
- Refuse alcohol producer and distributor sponsorship of events, publications, activities
- Restrictions of alcohol advertisements on television and radio
- Advertising to children
- Restrict or ban alcohol billboards

Enforcement Mechanisms

- Administrative penalties – civil rather than criminal offenses more likely to be implemented
- Compulsory compliance checks
- Restricting open house assemblies
- Hotlines to report sales to minors or intoxicated persons
- Adequate funding for enforcement

Drinking and Driving

- Zero tolerance
- Lower legal BAC
- Graduated Licensing for minors
- Check points for intoxicated driving
- Media Campaigns
- Ban open containers in cars
- Administrative License Review
- Mandatory screening and referral for DUI offenders

Alcohol Merchants

- Mandatory manager and staff training and incentives (for compliance)
- Check age identification
- Post warning signs/ distribute warning fliers
- Secret shopper program
- Prohibit sales to individuals accompanied by minors (parents and guardians excepted)
- Eliminate drinking competitions and drink specials
- Serve drinks in standard sizes
- Promote food and non-alcoholic beverages
- Campus permits, restrictions or bans
- Service to intoxicated patrons/ over service

Some Useful Alcohol Policy and Alcohol Advocacy Resources

- American Medical Association Alcohol Programs: www.alcoholpolicysolutions.net
- Center on Alcohol Marketing and Youth: www.camy.org
- Center for Science in the Public Interest (CSPI) Alcohol Program: www.cspinet.org
- Higher Education Center (HEC) for Alcohol and Other Drug Prevention: www.edc.org/hec
- Leadership to Keep Children Alcohol Free: www.alcoholfreechildren.org
- Lincoln Responsible Hospitality Council:
www.interlinc.ci.lincoln.nc.us/city/council/rhc/index.html
- Marin Institute: www.marininstitute.org
- Mothers Against Drunk Driving: www.madd.org
- National Council on Alcoholism and Drug Dependency (NCADD): www.ncadd.org
- NIAAA College Task Force: www.collegedrinkingprevention.gov
- OJJDP Underage Drinking Enforcement Training Center: www.udetc.org
- Trauma Foundation - Alcohol and Violence Project: www.tf.org/tf/alcohol/ariv
- University of Minnesota Division of Epidemiology: www.epi.umn.edu/alcohol

For research, data, analyses, discussion of issues, and news:

- National Institute on Alcohol Abuse and Alcoholism (NIAAA): www.niaaa.nih.gov
- Join Together: www.jointogether.org

**ALCOHOL BEVERAGE CONTROL
ENFORCEMENT:
Legal Research Report**

Division of Legal Analysis and Enforcement
Center for Policy Analysis and Training
Pacific Institute for Research and Evaluation

Completed under contract with the
National Highway Traffic Safety Administration
IDC DTNH22-98-D-35079

April, 2003

**ALCOHOL BEVERAGE CONTROL ENFORCEMENT:
Legal Research Report**

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ALCOHOL BEVERAGE CONTROL ENFORCEMENT

Legal Research Report

Introduction

With the enactment of the 21st Amendment in 1933, the United States ended its experiment with national Prohibition. The amendment gave states the primary authority for determining whether alcohol could be sold legally and, if so, how. Since that time, 51 different alcohol control systems (in each state and the District of Columbia) have evolved, creating a patchwork of laws and regulations with wide variation across jurisdictions. In practice, the federal government retains primary authority over the production of alcohol, and the states exercise primary jurisdiction over the retail distribution system.

A fundamental premise of the state regulatory systems is that alcoholic beverages are potentially hazardous products and therefore should be subject to special conditions not applied to other commercial products. Underage drinking and intoxication are of particular concern because of their connection to alcohol-related motor vehicle crashes. States vary widely in their approach to these alcohol problems, and although these variations may have enormous implications for prevention and treatment, few studies have described them or assessed their effectiveness. This report addresses this gap in the research literature by analyzing variations in 12 key legal policies addressing underage drinking and drinking to intoxication:

- Purchase of alcohol by minors
- Attempted purchase of alcohol by minors
- Possession of alcohol by minors
- Consumption of alcohol by minors
- Use of false ID cards
- Furnishing alcohol to minors
- Furnishing alcohol to intoxicated individuals
- Responsible Beverage Service
- Keg registration
- False and misleading advertising
- Advertising that targets minors
- Limitations on happy hours and drink specials.

A typology in chart form is presented for each policy. The 50 states plus the District of Columbia are listed on the left-hand side. Selected variables and exceptions related to each policy appear across the top. Checkmarks indicate the presence of the policy and its variables and exceptions. An introductory section for each policy defines the variables and exceptions and briefly analyzes the policy, including noteworthy characteristics or variations and the relationship of the policy to other policies in the report. The legal research is current as of January 1, 2003.

PLEASE NOTE:

- 1. Each of the typologies contains variables that have been defined in specific and narrow ways that may not mirror either the law of any particular state or the customary definition in any one state or group of states. We chose the categories and definitions with legal conventions and requirements in mind. Please refer to the definitions as you interpret the variables in each category. State law may cover a topic generally but not include the specific language required in our definitions.*
- 2. Our analysis is based on a review of state statutes and regulations. In some cases, alcohol beverage control (ABC) agencies may have implemented laws in a manner that accomplishes the result we were seeking even though the laws themselves do not meet our criteria. The charts do not include the results of this formal or informal administrative decision making.*
- 3. Our analysis focuses exclusively on state legislation. Although local jurisdictions may have enacted provisions that fit into these categories, we did not include these provisions in our analysis.*

ATTEMPTED PURCHASE/PURCHASE OF ALCOHOL BY MINORS

In 1984, Congress enacted the National Minimum Drinking Age Law, which required that states – as a condition of receiving state highway funds – prohibit persons under the age of 21 from purchasing or publicly possessing alcohol. By 1988, every state had passed legislation to meet the federal funding requirements. Since that time, there have been significant reductions in fatal highway traffic crashes and other public health problems as a result of the federal and state legislation raising the minimum purchase age.¹ This positive public health impact has occurred despite insufficient enforcement. Researchers have hypothesized that effective enforcement would enhance the beneficial impact of the legislation, and they have noted that some states have provisions that hamper enforcement efforts.²

Accordingly, most states specifically prohibit minors from purchasing alcohol. However, four states – Delaware, Indiana, New York, and Vermont – prohibit minors from purchasing alcohol only if the minor uses fraudulent identification or false statements. It is unclear how significant this variation is in practice. As discussed below, a purchase made in these states without using fraudulent means is probably still illegal under possession statutes. In addition, several states have exceptions to their purchase statutes that allow minors to purchase alcohol under limited circumstances. Unlike possession statutes (see below), the exceptions are relatively rare and provide very limited opportunities for minors to purchase alcohol. The most common exception – a purchase that occurs as part of a compliance check – provides an important tool for reducing illegal sales to minors. Exceptions included in the chart below are defined as follows:

- **Employment**—one state permits minors to purchase alcohol if in connection with their employment.
- **Student**—two states allow minors to purchase alcohol if in connection with being a student or for educational purposes.
- **Religious services**—one state permits minors to purchase alcohol if in connection with religious services.
- **Medical treatment**—two states permit minors to purchase alcohol if in connection with medical treatment.
- **Parent, guardian, or custodian consent or presence**—two states allow minors to purchase alcohol in the presence of, accompanied by, or with the consent of a parent, guardian, or custodian.
- **Spouse consent or presence**—one state allows minors to purchase alcohol in the presence of or with the consent of their legal-aged spouse.
- **Law enforcement**—13 states permit minors to purchase alcohol in connection with an investigation or “sting” operation conducted in conjunction with law enforcement officials (and, in several states, licensees or employers, see footnotes in the chart below) to identify illegal alcohol sales. This

¹ Wagenaar A and Toomey T. (2002). Effects of minimum drinking age laws: Review and analyses of the literature from 1960 to 2000. *Journal of Studies on Alcohol, Supplement No. 14*: 206-225.

² Wagenaar A. and Wolfson M. (1994). Enforcement of the legal minimum drinking age in the United States. *Journal of Public Health Policy* 15: 37-53.

exception often requires parental consent and specifies a minimum age at which minors can participate; many states require minors to be at least 18 years old. Many states may have this exception as part of an administrative decision even though there is no statutory provision. As noted above, our analysis does not include such decisions.

In contrast to the possession and consumption statutes analyzed below, no state exempts purchases in private settings, probably because to do so would appear to violate the National Minimum Drinking Age Law of 1984

The same exceptions apply or can be applied by implication to statutory provisions that prohibit attempted purchase of alcohol by minors. Attempted purchase is often, but not always, explicitly included in the statute related to the purchasing of alcohol by minors. Attempted purchases are conceptually a lesser-included part of the offense of purchasing – one cannot purchase alcohol without attempting to purchase it. Most states permit prosecutions for attempted crimes that involve affirmative acts even if the statutory crime does not explicitly include “attempt” language. Thus, states that do not explicitly include “attempted purchase” language probably still permit prosecution for such an offense. In addition, law enforcement officials did not identify the lack of an “attempted purchase” statute as a barrier to law enforcement.

Purchase provisions should be analyzed in conjunction with possession statutes (see below for analysis of possession statutes). Arguably, one cannot purchase alcohol without possessing it although one can possess it without purchasing (or attempting to purchase) it. Thus, a minor who purchases alcohol is potentially liable for two offenses. Purchasing alcohol is generally considered the more serious of the two offenses. This is an important factor in the analysis of several states’ lack of a purchasing statute comparable to that of the other 46 states and the District of Columbia.

Attempted Purchase/Purchase of Alcohol by Minors

	Attempted Purchase by Minors	Purchase by Minors	EXCEPTIONS						
			Employment	Student	Religious Services	Medical Treatment	Parent/Guardian/Custodian Consent/Presence	Spouse Consent/Presence	Law Enforcement
Alabama	√	√							
Alaska		√							
Arizona		√							√
Arkansas		√							
California	√	√							√
Colorado	√	√							
Connecticut	√	√							
Delaware ³									
District of Columbia	√	√							
Florida	√	√							
Georgia	√	√			√	√			
Hawaii		√							√

³ Delaware does not have a statute that specifically prohibits attempted purchase or purchase but does prohibit “obtaining” alcohol in connection with making a false statement.

	Attempted Purchase by Minors	Purchase by Minors	EXCEPTIONS						
			Employment	Student	Religious Services	Medical Treatment	Parent/Guardian/Custodian Consent/Presence	Spouse Consent/Presence	Law Enforcement
Idaho	√	√							
Illinois ⁴		√							√
Indiana ⁵									
Iowa	√	√							
Kansas ⁶	√	√							√
Kentucky	√	√							
Louisiana		√				√			
Maine		√							
Maryland		√							
Massachusetts	√	√							
Michigan ⁷	√	√							√
Minnesota ⁸	√	√		√					
Mississippi		√							
Missouri	√	√							
Montana	√	√							
Nebraska	√	√							
Nevada		√							
New Hampshire	√	√							
New Jersey	√	√							
New Mexico	√	√							
New York ⁹									
North Carolina	√	√							
North Dakota	√	√							
Ohio	√	√							
Oklahoma	√	√					√		√
Oregon ¹⁰	√	√							√
Pennsylvania	√	√							√
Rhode Island	√	√							
South Carolina		√	√	√					
South Dakota	√	√							

⁴ Illinois's exception allows minors to purchase or possess alcohol if they are participating in a licensee "sting operation."

⁵ Indiana does not have a statute that specifically prohibits attempted purchase or purchase, but does prohibit attempted purchase or purchase in connection with making a false statement of age. Enforcement officials indicated that they use the possession statute or law prohibiting minors in taverns.

⁶ Kansas's exception allows minors to "violate the provisions of the Kansas Liquor Control Act" if they are under the direction of a licensee self-compliance program.

⁷ Michigan's exception allows minors to "purchase or receive" alcohol as a part of an undercover operation by direction of an employer.

⁸ Minnesota's exception allows attempted purchase or purchase by minors if they are supervised by a person 21 years or older for "training, education, or research purposes."

⁹ New York does not have a statute that specifically prohibits attempted purchase or purchase but does prohibit attempted purchase or purchase through "fraudulent means."

¹⁰ Oregon's exception indicates that its prohibitions do not apply to minors who are acting under the direction of a licensee for the purpose of investigating possible violations by the licensee's employees of laws prohibiting sales to minors.

	Attempted Purchase by Minors	Purchase by Minors	EXCEPTIONS						
			Employment	Student	Religious Services	Medical Treatment	Parent/Guardian/Custodian Consent/Presence	Spouse Consent/Presence	Law Enforcement
Tennessee	√	√							√
Texas	√	√							√
Utah	√	√							
Vermont ¹¹									
Virginia	√	√							
Washington ¹²	√	√							√
West Virginia	√	√							√
Wisconsin	√	√					√	√	
Wyoming	√	√							
State Totals	36	47	1	2	1	2	2	1	13

¹¹ Vermont does not have a statute that specifically prohibits attempted purchase or purchase but does prohibit "procuring" or "attempting to procure" alcohol in connection with false representations of age.

¹² Washington's exception allows minors 18 years and older to purchase alcohol if they are participating in employer self-compliance checks.

POSSESSION OF ALCOHOL BY MINORS

As noted above, the National Minimum Drinking Age Law of 1984 provides that states will lose certain highway funds unless they make the purchase and public possession of alcohol by minors illegal. The statute does not provide specific guidance regarding the definition of "public possession," which by its terms does not include possession in privately owned locations.

All states prohibit possession of alcohol by minors to some extent, and all appear to be in compliance with the federal statute. However, states apply various statutory exceptions, and these exceptions are more expansive and more prevalent than those found in purchasing statutes.

Exceptions found in the chart below are defined as follows:

- **Employment**—45 states permit minors to possess alcohol in connection with their employment. One state, Wyoming, also allows possession by minors who are licensees.
- **Student**—six states permit minors to possess alcohol in connection with being a student or for educational purposes (often specifically linked to culinary schools).
- **Religious services**—18 states allow minors to possess alcohol in connection with religious services.
- **Medical treatment**—14 states allow minors to possess alcohol in connection with medical treatment.
- **Parent, guardian, or custodian consent or presence**—33 states permit minors to possess alcohol in the presence of, accompanied by, or with the consent of a parent, guardian, or custodian. States vary widely in terms of which relatives must be present for the exception to apply and in what circumstances. For example, Massachusetts allows possession by minors if they are "accompanied by parent or legal guardian"; Delaware allows possession in the "private home" of any "members of the same family"; Oregon allows possession of alcohol in a "private residence . . . accompanied by parent or guardian . . . with [his or her] consent," etc.
- **Spouse consent or presence**—nine states permit minors to possess alcohol in the presence of or with the consent of their legal-aged spouse.

Three exceptions are related: the first, Any Private Location, includes Private Residence, which, in turn, includes Only Minor's/Parent's/Guardian's Home. States were categorized according to the most narrowly drawn category into which their statutory provisions fit. States vary in the extent of the private property exception and the specific wording.

- **Any private location**—ten states allow minors to possess alcohol in any private location (including any private residence or venue). This exception is often implied by statutory provisions that indicate the converse – that is, a state prohibits minors from possessing alcohol in any *public* place.
- **Private residence**—seven states allow minors to possess alcohol only in a private residence.

- **Only minor's, parent's, or guardian's home**—four states permit minors to possess alcohol only in the minor's, parent's, or guardian's home or primary residence.
- **Law enforcement**—nine states permit minors to possess alcohol in connection with an investigation or "sting" operation conducted by law enforcement officials (and, in several states, licensees or employers, see footnotes below) to identify illegal alcohol sales. This exception often requires parental consent and specifies a minimum age at which minors can participate; many states require minors to be at least 18 years old. Many states may have this exception as part of an administrative decision even though there is no statutory provision. As noted above, our analysis does not include such decisions.

The exceptions related to possession on private property and in private residences are the most important in terms of underage drinking and related problems. Law enforcement officials report that the exceptions can create significant barriers to preventing or ending underage drinking parties in private settings, particularly in private residences. Many communities report that these events often involve heavy drinking, drinking and driving, sexual assaults, and other forms of violence. Yet in some states, the minors involved in the events are not violating the law, and if no adult is present, no crime is being committed.

As with purchase statutes, the law enforcement exception provides an important tool for enforcing prohibitions on sales to minors. Note that this exception probably does not need to be present in both the possession and the purchase provisions. An effective compliance check can be conducted if the minor involved is allowed to purchase or possess alcohol as part of the enforcement procedure.

Possession of Alcohol by Minors

	Possession by Minors	EXCEPTIONS									
		Employment	Student	Religious Services	Medical Treatment	Parent/Guardian/Custodian Consent/Presence	Spouse Consent/Presence	Any Private Location	Private Residence	Only Minor's/Parent's/Guardian's Home	Law Enforcement
Alabama	√	√									
Alaska	√				√	√	√				
Arizona	√	√		√							
Arkansas	√	√									
California ¹	√	√				√		√			
Colorado ²	√			√	√	√		√			
Connecticut	√	√			√	√	√	√			
Delaware ³	√	√		√		√			√		

¹ California's exception allows possession when a minor is making a delivery by order of a parent, relative, or another adult designated by the parent.

² Colorado's exception requires the knowledge and consent of the owner of the private property when minors possess or consume alcohol (in addition to the consent or presence of a parent or guardian). Also, it is an affirmative defense to illegal possession or consumption that existence of ethyl alcohol in a minor's body is due solely to ingested confectionery or a beverage that contained less than 0.5 percent of ethyl alcohol by weight.

³ Delaware's exception includes "members of the same family" and allows possession or consumption in the "private home of any of said members."

	Possession by Minors	EXCEPTIONS									
		Employment	Student	Religious Services	Medical Treatment	Parent/ Guardian/ Custodian/ Consent/ Presence	Spouse Consent/ Presence	Any Private Location	Private Residence	Only Minor's/ Parent's/ Guardian's Home	Law Enforce- ment
District of Columbia	√	√									
Florida	√	√	√								
Georgia	√	√		√	√	√				√	
Hawaii	√	√		√	√	√		√			√
Idaho ⁴	√	√				√			√		
Illinois ⁵	√	√		√		√		√			√
Indiana	√	√									
Iowa	√	√			√	√			√		
Kansas ⁶	√	√				√					√
Kentucky	√	√									
Louisiana	√	√		√	√	√	√		√		
Maine	√	√				√			√		
Maryland ⁷	√	√		√		√			√		
Massachusetts	√	√				√					
Michigan ⁸	√	√		√							√
Minnesota	√	√				√				√	
Mississippi	√	√				√	√	√			
Missouri	√	√			√	√					
Montana	√	√		√	√	√					
Nebraska	√	√		√	√					√	√
Nevada	√	√		√	√	√	√	√			
New Hampshire	√	√									
New Jersey ⁹	√	√	√	√		√					
New Mexico	√	√				√		√			
New York	√	√	√			√					
North Carolina	√										
North Dakota	√	√									
Ohio	√			√	√	√	√				
Oklahoma	√	√				√		√			
Oregon ¹⁰	√			√		√			√		√

⁴ Idaho's exception allows possession of beer or wine when the minor is making a delivery by order of his or her parent.

⁵ Illinois's exception allows minors to purchase or possess if they are part of a licensee's "sting operation."

⁶ Kansas's exception allows minors to "violate the provisions of the Kansas Liquor Control Act" if they are under the direction of a licensee's self-compliance program.

⁷ Maryland's exception allows possession or consumption of alcohol by minors if an adult member of their immediate family allows it.

⁸ Michigan's exception allows minors to "purchase or receive" alcohol as a part of an undercover operation by direction of an employer.

⁹ New Jersey's exception allows possession or consumption of alcohol by minors with the permission of and in the presence of a relative 21 years or older.

¹⁰ Oregon's exception indicates that its prohibitions do not apply to minors who are acting under the direction of a licensee for the purpose of investigating possible violations by the licensee's employees of laws prohibiting sales to minors.

	Possession by Minors	EXCEPTIONS									
		Employment	Student	Religious Services	Medical Treatment	Parent/ Guardian/ Custodian/ Consent/ Presence	Spouse Consent/ Presence	Any Private Location	Private Residence	Only Minor's/ Parent's/ Guardian's Home	Law Enforce- ment
Pennsylvania	√			√							√
Rhode Island	√	√									
South Carolina	√	√	√	√		√				√	
South Dakota	√	√			√	√	√				
Tennessee	√	√									
Texas	√	√				√	√				√
Utah	√	√									
Vermont	√	√	√								
Virginia	√	√				√					
Washington	√	√	√	√	√	√					
West Virginia	√	√									√
Wisconsin	√	√				√	√				
Wyoming ¹¹	√	√				√		√			
State Totals	51	45	6	18	14	33	9	10	7	4	9

¹¹ Wyoming's exception allows a minor licensee to possess alcohol.

CONSUMPTION OF ALCOHOL BY MINORS

Most but not all states prohibit consumption of alcohol by minors as well as possession. Possession and consumption are closely linked. One can't consume alcohol without possessing it although one can possess it without consuming it. Possession and consumption are usually treated as equivalent offenses and are seldom charged separately. Nevertheless, law enforcement officials report that it is important to have a separate law for each activity. The distinction may facilitate enforcement at drinking parties where the alcohol cannot be recovered, but evidence of consumption is available through observation or breath or urine tests. We were unable to verify through any legal analysis that such a fact pattern would be more easily accomplished through a prohibition against consumption than through a possession provision. The evidence appears to be equally relevant to both activities because one cannot consume without possessing. However, specific fact patterns in case law have made this distinction between possession and consumption, indicating that a minor may not necessarily be charged with possession despite evidence of consumption.

Moreover, in states maintaining a distinction between these provisions, the employment exception appears to hold some significance: a minor employee of an alcohol establishment may be permitted to possess but not to consume. In addition, some states apply different exceptions to their possession and consumption statutes.

Exceptions to consumption of alcohol by minors are identical (except for the employment Exception) to those found in the possession statutes. Please refer to the definitions above.

Consumption of Alcohol by Minors

	Consumption by Minors	EXCEPTIONS								
		Student	Religious Services	Medical Treatment	Parent/Guardian/Custodian Consent/Presence	Spouse Consent/Presence	Any Private Location	Private Residence	Only Minor's/Parent's/Guardian's Home	Law Enforcement
Alabama	√									
Alaska	√			√	√	√				
Arizona	√		√	√						
Arkansas										
California	√									
Colorado ¹	√		√	√	√		√			
Connecticut										
Delaware ²	√		√		√			√		
District of Columbia	√									
Florida										
Georgia										
Hawaii										

¹ Colorado's exception requires the knowledge and consent of the owner of the private property when minors possess or consume alcohol (in addition to the consent or presence of a parent or guardian). Also, it is an affirmative defense to illegal possession or consumption that existence of ethyl alcohol in minor's body is due solely to ingested confectionery or a beverage that contained less than 0.5 percent of ethyl alcohol by weight.

² Delaware's exception includes "members of the same family" and allows possession or consumption of alcohol by minors in the "private home of any of said members."

	Consumption by Minors	EXCEPTIONS								
		Student	Religious Services	Medical Treatment	Parent/Guardian/Custodian Consent/Presence	Spouse Consent/Presence	Any Private Location	Private Residence	Only Minor's/Parent's/Guardian's Home	Law Enforcement
Idaho	√									
Illinois	√		√		√			√		
Indiana	√									
Iowa										
Kansas ³	√				√					√
Kentucky										
Louisiana	√		√	√	√	√		√		
Maine	√				√			√		
Maryland ⁴	√		√		√			√		
Massachusetts										
Michigan	√	√	√							
Minnesota	√				√				√	
Mississippi										
Missouri										
Montana	√		√	√	√					
Nebraska	√		√						√	√
Nevada	√									
New Hampshire										
New Jersey ⁵	√		√		√					
New Mexico										
New York	√	√			√					
North Carolina	√									
North Dakota	√		√							
Ohio	√		√	√	√	√				
Oklahoma	√				√					
Oregon	√		√		√			√		
Pennsylvania	√		√							
Rhode Island	√									
South Carolina										
South Dakota	√		√	√	√	√				
Tennessee	√		√							
Texas	√				√	√				
Utah	√			√						
Vermont	√	√								
Virginia										
Washington	√		√	√	√					

³ Kansas's exception allows minors to "violate the provisions of the Kansas Liquor Control Act" if they are under the direction of a licensee's self-compliance program.

⁴ Maryland's exception allows possession or consumption of alcohol by minors if an adult member of their immediate family allows it.

⁵ New Jersey's exception allows possession or consumption of alcohol by minors with the permission and in the presence of a relative 21 years or older.

	Consumption by Minors	EXCEPTIONS								
		Student	Religious Services	Medical Treatment	Parent/ Guardian/ Custodian Consent/ Presence	Spouse Consent/ Presence	Any Private Location	Private Residence	Only Minor's/ Parent's/ Guardian's Home	Law Enforcement
West Virginia	√									
Wisconsin	√				√	√				
Wyoming										
State Totals	36	3	17	9	19	6	1	6	2	2

USE OF FALSE IDENTIFICATION CARDS

There are several policies that address the use of false identification cards by minors. Specific prohibitions against the use of such cards to purchase alcohol are usually found in the ABC codes in each state. Associated policies include the following: (1) prohibitions against lending or transferring false identification cards for the purpose of purchasing alcohol; (2) prohibitions against the manufacture or sale of false identification cards; (3) exemptions for alcohol retailers who mistakenly rely on apparently valid identification cards that are false; and (4) the rights of retailers to confiscate false identification cards.

Though all of these policies are relevant in deterring underage purchases of alcohol, we focused our research on two: (1) prohibiting the use of false identification by minors to purchase alcohol; and (2) prohibiting the lending or transferring of false identification cards to others. We determined that these two provisions were important to law enforcement in deterring underage purchases and were also the most feasible in terms of conducting the necessary legal research.

Prohibitions against the manufacture or sale of false identifications are also important to law enforcement, but according to secondary sources, many sales of false identifications are made in interstate commerce via the Internet. It is unclear to what extent a state has authority to regulate these sales. Because this rapidly developing policy area would require extensive review of the case law in each state, we determined that it was not feasible to analyze this area for this project.

The exemption for retailers who mistakenly rely on false identification cards is a provision more closely associated with illegal sales than with illegal purchases. The existence of this provision in a state will have no effect on the likelihood of a minor using a false identification card for his or her purchase. Thus, we did not include this provision in our research.

Finally, although the right of a retailer to confiscate false identification cards might reduce illegal sales by removing the confiscated IDs from circulation, this provision does not appear to increase the likelihood of detection or prosecution, and secondary sources suggest that false identifications are readily available (and therefore easily replaced after confiscation). Consequently, we did not include this provision in our research.

It is worthwhile to note that state statutes may prohibit false statements and/or the use of false identification cards. Interviews with state alcohol law enforcement officials confirm our legal analysis: a statute that prohibits the use of false statements includes by inference the use of a false identification card. In other words, presenting a false identification card is equivalent to making a false statement. We have concluded that it is not necessary to distinguish between "false statement" and "false identification" language in the statutes. A minor who makes a false statement regarding age but does not use a false identification card is most likely to be prosecuted for an illegal attempted purchase whether or not the false identification statute encompasses the use of both false statements and false identification cards.

The chart below indicates that all 50 states and the District of Columbia prohibit the use of false identification cards by minors, and the majority make lending and transferring identification cards illegal as well.

Use of False Identification Cards

	Use of False ID Cards by Minors	Lending/Transferring ID Cards
Alabama	√	
Alaska	√	
Arizona	√	
Arkansas	√	√
California	√	√
Colorado	√	√
Connecticut	√	
Delaware	√	
District of Columbia	√	
Florida	√	√
Georgia	√	
Hawaii	√	√
Idaho	√	√
Illinois	√	√
Indiana	√	√
Iowa	√	√
Kansas	√	√
Kentucky	√	
Louisiana	√	√
Maine	√	√
Maryland	√	
Massachusetts	√	√
Michigan	√	√
Minnesota	√	√
Mississippi	√	√
Missouri	√	
Montana	√	
Nebraska	√	√
Nevada	√	√
New Hampshire	√	√
New Jersey	√	√
New Mexico	√	√
New York	√	√
North Carolina	√	√
North Dakota	√	
Ohio	√	
Oklahoma	√	
Oregon	√	√
Pennsylvania	√	
Rhode Island	√	√
South Carolina	√	√
South Dakota	√	√
Tennessee	√	
Texas	√	
Utah	√	√
Vermont	√	

	Use of False ID Cards by Minors	Lending/Transferring ID Cards
Virginia	√	√
Washington	√	√
West Virginia	√	
Wisconsin	√	√
Wyoming	√	√
State Totals	51	32

FURNISHING ALCOHOL TO MINORS

All states and the District of Columbia prohibit furnishing alcoholic beverages to minors, even though the 1984 federal legislation does not explicitly require this prohibition. The prohibition usually applies to both commercial and noncommercial servers, although extensive case law research would be required to determine which states limit the prohibition to commercial sellers. This is because the language is unclear in many statutes. In addition, the prohibition is usually found in the Alcoholic Beverage Control Codes, which apply primarily to commercial sellers and servers. Because of these difficulties, we did not determine whether the prohibition found in each state applies to noncommercial as well as commercial transactions.

The states vary widely regarding the specific acts that are prohibited. Arizona law, for example, states that it is illegal to "sell, furnish, dispose of or give [alcohol], or cause [alcohol] to be sold, furnished, disposed of or given" to an underage person. California's provision is almost identical but omits the reference to "disposing of" alcohol to a minor. Kansas prohibits delivering and exchanging alcohol with a minor in its list of prohibitions. Michigan, on the other hand, only includes the terms "sell" and "give". Our analysis concluded that it wasn't important which specific prohibited acts were included in the state statutes. Michigan's short list of "sell" and "give" is as effective legally as the longer lists found in other states. As noted above, even if the list appears incomplete (e.g., it does not appear on its face to cover noncommercial transactions), courts may interpret the statutory language expansively. We therefore did not catalog the specific acts that were prohibited, but merely confirmed that both sales and gifts were included.

The categories of exceptions applied to minor possession, consumption, and purchase of alcohol also apply to those who provide alcohol to minors.¹ States do not always apply the same exception to both the provider and the minor. California, for example, permits minors to possess alcohol in private venues, but it is illegal for anyone to provide alcohol to minors in either public or private settings. In certain situations, courts may conclude that an exception for the provider should be implied from that granted to the minor even if it is not explicitly included in the statutes (and vice versa). This is particularly relevant to exceptions for the parents and relatives and for employment. For example, a court might conclude that if a law that explicitly allows a minor to possess alcohol in the presence of his or her parent, the parent is permitted to provide it to the child.

As in the possession statutes, exceptions are provided for furnishing alcohol to persons under the age of 21 who are employees of licensed establishments. These exceptions are often covered under separate statutes that deal with the minimum age of sellers and servers in licensed outlets. We did not include these in this chart. Exceptions included in the chart are defined as follows:

- **Parent/guardian**—23 states permit parents and legal guardians to provide alcohol to their minor children or wards.
- **Legal-aged spouse**—eight states allow a person age 21 years or older to provide alcohol to his or her underage spouse.
- **Religious services**—nine states permit alcohol to be served to minors in connection with religious services.

¹ Note that these exceptions apply to noncommercial furnishers of alcohol. States that have these exceptions, by implication, prohibit noncommercial service of alcohol to minors. As noted above, states without an exception listed in our chart may permit noncommercial furnishing to minors generally.

- **Medical treatment**—11 states permit alcohol to be given to minors in connection with medical treatment.
- **Education**—three states permit educational institutions to provide alcohol to minors in connection with being a student or for educational purposes.

Furnishing Alcohol to Minors

	Furnishing Alcohol to Minors	EXCEPTIONS				
		Parent/Guardian	Legal-aged Spouse	Religious Services	Medical Treatment	Education
Alabama	√					
Alaska ²	√	√	√		√	
Arizona	√					
Arkansas ³	√	√	√	√		
California	√					
Colorado	√					
Connecticut	√	√	√		√	
Delaware	√	√		√		
District of Columbia	√					
Florida	√					√
Georgia	√					
Hawaii	√					
Idaho	√					
Illinois	√			√		
Indiana	√					
Iowa	√	√			√	
Kansas ⁴	√	√				
Kentucky	√	√				
Louisiana	√					
Maine	√	√				
Maryland	√					
Massachusetts	√	√				
Michigan	√					
Minnesota	√	√				
Mississippi	√					
Missouri	√	√				
Montana ⁵	√	√		√	√	
Nebraska	√					

²Alaska's statute includes references to "legal spouse" rather than "legal-aged spouse." The exceptions apply only off the licensed premises.

³Arkansas's statute refers to "family members" but does not specify which family members.

⁴In Kansas, parents or legal guardians may provide only cereal malt beverage to their minor child or ward.

⁵In Montana, §16-6-305 1(b) specifies that "a parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age." Section 16-6-305 1(c) defines "intoxicating quantity" as "a quantity of an alcoholic beverage that is sufficient to produce: (i) a blood, breath, or urine alcohol concentration in excess of 0.05; or (ii) substantial or visible mental or physical impairment."

	Furnishing Alcohol to Minors	EXCEPTIONS				
		Parent/Guardian	Legal-aged Spouse	Religious Services	Medical Treatment	Education
Nevada	√	√			√	
New Hampshire	√					
New Jersey	√					
New Mexico	√	√				
New York	√					√
North Carolina	√					
North Dakota	√					
Ohio	√	√	√	√	√	
Oklahoma	√					
Oregon	√	√				
Pennsylvania	√			√		
Rhode Island	√					
South Carolina	√	√	√	√		√
South Dakota	√	√	√		√	
Tennessee	√					
Texas	√					
Utah	√	√			√	
Vermont	√					
Virginia	√				√	
Washington	√	√		√	√	
West Virginia ⁶	√	√	√			
Wisconsin	√	√	√	√		
Wyoming	√	√			√	
State Totals	51	23	8	9	11	3

⁶ In West Virginia, both §60-3-22a and §60-3A-24 state that "Any person who knowingly buys for, gives to or furnishes to anyone under the age of twenty-one to whom he or she is not related by blood or marriage any liquor from whatever source, is guilty of a misdemeanor...."

FURNISHING ALCOHOL TO INTOXICATED INDIVIDUALS

Almost every state and the District of Columbia have a provision that prohibits sales and service of alcohol to intoxicated persons. The primary ways in which the states describe the offense include specific wording related to intoxication levels and the types of prohibitions enumerated. For example, the following words are used to describe intoxicated persons:

- obviously intoxicated
- visibly intoxicated
- appears to be intoxicated
- noticeably intoxicated
- reason to believe is intoxicated
- apparently under the influence of liquor.

At least one state, Arizona, defines what it means to be obviously intoxicated. AZ ST 4-244 states:

For purposes of this section, "obviously intoxicated" means inebriated to the extent that a person's physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person.

Although there is variation in the language used to describe the state of intoxication, it does not appear to make a practical difference in terms of court interpretation or enforcement practices.

Differences across state statutes also include the standard of proof required as evidence of intoxication. For example, some states require knowledge of the person's intoxication, although most apply a negligence standard (a reasonable person in like circumstances should have known that the person was intoxicated). The only method for determining the standard of proof applied in a given state is to analyze case law, and, in many cases, such an analysis will be inconclusive. Therefore we did not attempt to catalog the standard of proof variable.

Furnishing Alcohol to Intoxicated Individuals

	Furnishing Alcohol to Intoxicated Individuals
Alabama	√
Alaska	√
Arizona	√
Arkansas	√
California	√
Colorado	√
Connecticut	√
Delaware	√
District of Columbia	√
Florida	
Georgia	√
Hawaii	√
Idaho	√

	Furnishing Alcohol to Intoxicated Individuals
Illinois	√
Indiana	√
Iowa	√
Kansas	√
Kentucky	√
Louisiana	√
Maine	√
Maryland	√
Massachusetts	√
Michigan	√
Minnesota	√
Mississippi	√
Missouri	√
Montana	√
Nebraska	√
Nevada	
New Hampshire	√
New Jersey	√
New Mexico	√
New York	√
North Carolina	√
North Dakota	√
Ohio	√
Oklahoma	√
Oregon	√
Pennsylvania	√
Rhode Island	√
South Carolina	√
South Dakota	√
Tennessee	√
Texas	√
Utah	√
Vermont	√
Virginia	√
Washington	√
West Virginia	√
Wisconsin	√
Wyoming ¹	
State Totals	48

¹ In Wyoming, §12-5-301 states that "No order shall be received from nor delivery made to a person under twenty-one (21) years of age or an intoxicated person in the area." Since this provision applies only to "Drive-In Areas," we did not include this state as having a provision that prohibits furnishing alcohol to intoxicated individuals.

RESPONSIBLE BEVERAGE SERVICE

Responsible Beverage Service (RBS) or server training programs have two goals: (1) to establish policies and procedures in retail alcohol outlets for preventing alcohol sales and service to minors and intoxicated persons; and (2) to train managers and servers/clerks to implement those policies and procedures effectively. Server/clerk training focuses on serving and selling procedures, signs of intoxication, methods for checking age identification, and intervention techniques. Manager training includes the server/clerk training as well as policy and procedures development and staff supervision.

Experimental RBS programs first appeared in the early 1980s. States with RBS provisions have either mandatory programs or incentive-based voluntary programs. Voluntary, private programs exist to varying degrees in the other states, but those states do not have provisions that provide statewide structure for the design and implementation of these programs.

A program is designated as mandatory if state law requires at least some alcohol retail employees to attend a RBS training. Thirteen states require some type of RBS training, but these states vary widely in who must participate:

- *Type of employee*: statutes may require owners or licensees, managers and servers/clerks, or a subset of these classifications to participate;
- *Type of outlet*: statutes may require either on-sale or off-sale establishments, or both, to participate; and
- *Date of license issuance*: statutes may require participation from establishments with licenses issued after the legislation is enacted or from all establishments, regardless of the date of the license.

The eleven states that have established voluntary programs provide incentives for retailers to participate in RBS, but do not impose penalties for those who don't. Incentives vary by state and include (1) a defense in dram shop liability law suits; (2) mitigation of fines for sales to minors or intoxicated persons; (3) discounts in dram shop liability insurance; and (4) protection against revocation of a license for sales to minors or intoxicated persons.

Whether mandatory or voluntary, RBS programs vary in training curricula components; procedures for administering the program; certificate requirements for RBS trainers, servers/clerks, and managers; penalties for violations; and enforcement practices. These variables may have a dramatic impact on the program's effectiveness in reducing sales to minors and intoxicated persons.

The following variables pertain to mandatory provisions:

- **Employee categories**—of the 13 states that require mandatory RBS training, 7 require the licensee, managers, and servers to attend; 5 states require only managers and servers to take the training; and 1 requires the licensee and managers to attend.
- **Establishment types**—eight states require that on- and off-sale establishments participate in RBS training; four states require only on-premise establishments to participate; and one requires only off-premise establishments to receive training.

- **Date of issuance of license**—all 13 of the states that require mandatory RBS training require new licensees to participate, and 2 states exempt establishments licensed before the legislation was enacted.

The variables that pertain to voluntary incentives are as follows:

- **Liability defense**—three states allow licensees to use their RBS training as a defense in dram shop liability cases.
- **Mitigation of fines**—seven states allow fines for sales of alcohol to minors or intoxicated persons to be mitigated if the licensee can demonstrate that he or she participated in RBS training.
- **Discount insurance**—three states allow discounts in dram shop liability insurance if the licensee has participated in RBS training.
- **Protection of license**—three states provide protection against revocation for sales of alcohol to minors or intoxicated persons if the licensee has participated in RBS training.

Responsible Beverage Service

	RBS Provision		Mandatory States							Voluntary States			
			Categories of Employees Required to Attend RBS Training			Establishment Type Required to Participate		Applies to New or Existing Licenses		Incentives			
	Man-datory	Volun-tary	Licensee	Manager	Server	On	Off	New	Existing	Liability Defense	Miti-gation of Fines	Dis-count Ins.	Pro-tection of License
Alabama		√										√	√
Alaska	√			√	√	√	√	√	√				
Arizona		√									√		
Arkansas		√									√		
California													
Colorado													
Connecticut													
Delaware	√		√	√	√	√	√	√	√				
District of Columbia													
Florida		√									√		√
Georgia													
Hawaii													
Idaho													
Illinois		√									√	√	
Indiana		√									√		
Iowa													
Kansas													
Kentucky													
Louisiana	√			√	√	√	√	√	√				

	RBS Provision		Mandatory States							Voluntary States			
			Categories of Employees Required to Attend RBS Training			Establishment Type Required to Participate		Applies to New or Existing Licenses		Incentives			
	Man-datory	Volun-tary	Licensee	Manager	Server	On	Off	New	Existing	Liability Defense	Miti-gation of Fines	Dis-count Ins.	Pro-tection of License
Maine		√								√			
Maryland	√		√	√	√	√	√	√	√				
Massachusetts													
Michigan		√										√	
Minnesota													
Mississippi													
Missouri													
Montana													
Nebraska													
Nevada													
New Hampshire		√								√	√		
New Jersey	√		√	√			√	√	√				
New Mexico	√			√	√	√	√	√	√				
New York													
North Carolina													
North Dakota													
Ohio													
Oklahoma													
Oregon	√			√	√	√		√	√				
Pennsylvania	√			√	√	√	√	√	√				
Rhode Island		√								√	√		
South Carolina													
South Dakota													
Tennessee	√		√	√	√	√		√	√				
Texas		√											√
Utah	√		√	√	√	√		√	√				
Vermont	√		√	√	√	√	√	√	√				
Virginia													
Washington	√		√	√	√	√		√	√				
West Virginia													
Wisconsin	√		√	√	√	√	√	√					
Wyoming													
State Totals	13	11	8	13	12	12	9	13	11	3	7	3	3

KEG REGISTRATION

Keg registration allows tracking of beer kegs from the time of purchase to the time the empty keg is returned to the vendor. The purpose of these laws is to deter adults from providing keg beer to minors and to identify and punish those who do. The laws are also designed to protect distributors from being accused of selling kegs to underage consumers.

Keg registration laws require wholesalers or retailers to attach a tag, sticker, or engraving with an identification number to kegs exceeding a specified capacity. When the keg is purchased, the retailer records identifying information about the purchaser. A refundable deposit may also be collected, but very few states specify whether a deposit is required and, if required, the amount of the deposit. For those states that do specify, the information appears in the footnotes to the chart below.

The recent introduction of disposable kegs presents a complicating factor for keg registration laws. These containers cannot be tagged or traced easily because they are meant to be disposed of when empty. This new technology suggests that deposit provisions are particularly important as a disincentive against destroying the keg, which defeats the purpose of the law. The analysis below indicates whether a state has a keg registration law, how "keg" is defined for the purposes of the keg provision, the type of purchaser information a retailer is required to obtain (and keep on file for a specified time period), and the type of information to be placed on kegs.

Currently 22 states have keg registration provisions of the type analyzed in this document. The variables analyzed in the chart below are as follows:

- **Keg definition**—this variable describes the minimum number of gallons a keg must hold to require registration. It varies from 2 to 16 gallons. One state (Rhode Island) does not specify the number of gallons needed to constitute a keg.
- **Purchaser information**—all states that require keg registration require that the purchaser provide his or her name or signature on the registration form. Sixteen states require that the purchaser show some type of identification; eight states allow the use of a driver's license, and two allow the use of car registration information. In addition, four states require that the purchaser specify where the keg will be consumed.
- **Type of identification label**—in most states with keg registration, the ABC will either issue forms to be used to track purchasers or sales (10 states) or specify the forms to be used (13 states). In three states, the ABC department or agency must approve the form used by those who sell kegs.

Keg Registration

	Keg Registration Provision	Keg Definition: Minimum Number of Gallons	Purchaser Information				Type of Identification Label		
			Identification	Driver's License	Car Registration	Keg Consumption Location	Form Specified	ABC Issued	Approved by ABC
Alabama									
Alaska									
Arizona									
Arkansas									
California ¹	√	6	√	√			√	√	
Colorado									
Connecticut ¹	√	6			√		√		
Delaware									
District of Columbia	√	4	√			√		√	
Florida									
Georgia ¹	√	2	√	√		√	√		√
Hawaii									
Idaho	√	7.75					√	√	
Illinois									
Indiana	√	7.75					√		
Iowa									
Kansas	√	4	√	√				√	
Kentucky									
Louisiana									
Maine ²	√	7.75	√				√		√
Maryland	√	4	√				√	√	
Massachusetts ³	√	2	√				√	√	
Michigan									
Minnesota	√	7	√						
Mississippi									
Missouri									
Montana									
Nebraska	√	5	√	√			√		
Nevada									
New Hampshire	√	7	√	√			√		
New Jersey									
New Mexico	√	More than 6	√	√			√		
New York									
North Carolina									
North Dakota ⁴	√	6	√	√					

¹ In California, Connecticut, and Georgia, a deposit is required to obtain a keg, but the deposit amount is not specified.

² In Maine, a deposit of up to \$50 is required.

³ In Massachusetts, there are two types of fees required: (1) a container fee of not less than \$10.00 for each keg of six or more gallons and not less than \$1.00 for each container of less than six gallons; (2) a registration fee of \$10.00 for each keg of six or more gallons and \$4.00 for each keg of less than six gallons.

⁴ North Dakota is the only state that specifies the type of ink to be used on the keg label.

	Keg Registration Provision	Keg Definition: Minimum Number of Gallons	Purchaser Information				Type of Identification Label		
			Identifi- cation	Driver's License	Car Registration	Keg Consumption Location	Form Specified	ABC Issued	Approved by ABC
Ohio ⁵	√	5					√	√	
Oklahoma									
Oregon	√	7	√	√	√		√	√	
Pennsylvania									
Rhode Island	√								
South Carolina									
South Dakota ⁶	√	8 or 16							
Tennessee									
Texas									
Utah ⁷									
Vermont ⁸	√	5	√						√
Virginia	√	4	√			√		√	
Washington	√	4	√			√		√	
West Virginia									
Wisconsin									
Wyoming									
State Totals	22		16	8	2	4	13	10	3

⁵ In Ohio, keg registration is mandatory only if five or more kegs are being purchased.

⁶ South Dakota statute 35-1-11 defines a keg as "an eight or sixteen gallon reusable plastic or metal container."

⁷ In Utah, "a person may not sell, offer to sell, or otherwise furnish or supply beer to the general public in containers larger than two liters. This does not preclude licensed beer wholesalers from selling, offering to sell, or otherwise furnishing or supplying beer in containers larger than two liters to beer retailers authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises." In addition, "a person may not purchase or possess beer in containers larger than two liters unless that person is a beer retailer authorized by this title to dispense beer on draft for consumption on the beer retailer's licensed premises."

⁸ In Vermont, a \$25 deposit is required.