

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11200 SENATE JUDICIARY

LEGAL SERVICES

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

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MEMORANDUM

April 21, 2004

SUBJECT: CSHB 427(JUD) relating to guardianships, conservatorships, and other matters (Work Order No. 23-LS1627\S)

TO: Representative Lesil McGuire
Chair, House Judiciary Committee
Attn: Vanessa

FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above. The draft includes the requested court rule change and small corrections, which are described below. Per your request, a copy of my 4-16-04 memo about the court rule change is attached for your reference.

1. Court rule change. The court rule change provisions have been added to the bill: in the title and at the end of the bill (bill sec. 32(a)). They are added for sec. 08.26.100 only because, upon rethinking, sec. 08.26.180 is an exemption and would, therefore, not affect the court rule. Sec. 35 has also been changed accordingly.
2. Sec. 08.26.050 conforming change. In sec. 08.26.050(a)(1) and (b), the two references to "National Guardianship Foundation" have been changed to conform to the governing language in sec. 08.26.020(3) and 08.26.030(3). The replacement language is "a nationally recognized organization in the field of guardianships."
3. Grammatical tense change. In AS 13.26.145(d)(1) and 13.26.210(d)(1), "has" is changed to "had" because it is meant to refer to an action in the past when the protected person nominated a guardian or conservator and may have had capacity.
4. Sec. 13.26.210(f) correction. Since this section deals with conservators, the reference to "guardian" in two places in sec. 13.26.210(f) has been changed to "conservator."
5. Effective date correction. Bill sec. 37 has been adjusted to reflect that bill sec. 34 has its own effective date.

If I may be of further assistance, please advise.

TLB:med
04-435.med

CC: Jim Shine

Enclosure

LEGAL SERVICES

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MEMORANDUM

April 16, 2004

SUBJECT: CSHB 427(JUD) relating to guardianships, conservatorships, guardians ad litem, and related matters
(Work Order No. 23-LS1627\Q)

TO: Representative Lesil McGuire
Chair, House Judiciary Committee
Attn: Vanessa

FROM: Theresa L. Bannister
Legislative Counsel

You have asked whether the bill described above has the effect of indirectly amending Rule 17(c), Alaska Rules of Civil Procedure. In my opinion, AS 08.26.100 and 08.26.180 may possibly be interpreted to indirectly amend Rule 17(c) because these sections are not limited to proceedings under AS 13.26. The Alaska Rules of Probate Procedure normally govern proceedings under AS 13.26 (see Rule 1, Alaska Rules of Probate Procedure). However, the prohibition in AS 08.26.100 (against appointing a guardian or conservator in a court proceeding unless the person is licensed) and the exemption in AS 08.26.180 are not limited to proceedings under AS 13.26. Rule 17(c) includes broad language that arguably could cover AS 08.26.100 and 08.26.180 by providing that the "court shall make such other order as it deems proper for the protection of the infant or incompetent person." Although the language in Rule 17(c) is not specifically changed, it is broad enough that I would recommend indicating this change in the bill (including in its title) or limiting the scope of the new provisions to proceedings brought under AS 13.26.

If I may be of further assistance, please advise.

TLB:med
04-415.med

THE
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April 23, 2004

The Honorable John Harris, Co-Chair
House Finance Committee
Alaska State Capitol, Room 507
Juneau, Alaska 99801-1182

The Honorable Bill Williams, Co-Chair
House Finance Committee
Alaska State Capitol, Room 515
Juneau, Alaska 99801-1182

Dear Co-Chairs Harris and Williams: RE: HB 427 (Anderson) – Support

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Finance Committee to support HB 427, sponsored 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,

Marguerite Stetson

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AARP Alaska
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- cc: Vice-Chair Kevin Meyer
- Representative Mike Chenault
- Representative Bud Fate
- Representative Richard Foster
- Representative Mike Hawker
- Representative Bill Stoltze
- Representative Eric Croft
- Representative Reggie Joule
- Representative Carl Moses
- Representative Tom Anderson
- Marie Darlin
- Patrick Luby

TESTIMONY PRESENTED BEFORE THE
ALASKA STATE LEGISLATURE

HOUSE
HEALTH, EDUCATION AND SOCIAL SERVICES
COMMITTEE

In the matter of
HB 427
"AN ACT RELATING TO GUARDIANSHIPS AND
CONSERVATORSHIPS..."

Testimony of
Robert P. Penzenik
Anchorage, Alaska

April 6, 2004

1 Mr. Chairman, members of the Committee, my name is Robert Penzenik, and I
2 would like to express my appreciation for the opportunity to speak this
3 afternoon. I currently am a resident of Anchorage and have lived in Alaska since
4 1964.

5

6 I am speaking today in support of HB 427, a bill I believe to be vitally important
7 to a small but important group of Alaskan's that are, I'm afraid, least able to
8 represent themselves, minors and those adults that the courts have found to be in
9 need of protection, some without families in Alaska.

10

11 I have been involved with Alaska's system of guardians and conservators both as
12 a provider of services and a user of those services. My most recent experience in
13 this area has been with my daughter, when she was found to be in need of a
14 Guardian/Conservator. In order to allow a more comfortable family relationship
15 it was decided to utilize the services of a paid, professional guardian and
16 conservator rather than a family member. We could not be more pleased with
17 the outcome. However, it should be noted that, in our situation, my daughter still
18 has an active support system in Alaska that is involved on a regular basis with
19 the Guardian/Conservator and is able to track such things as safety, financial
20 planning and the appropriate use of finances.

21

22 My primary reason for taking part in today's hearing is concern for those
23 individual's requiring services that do not have an operating support system in
24 place.

25

1 Some years ago, as a conservator for a number of minors that had lost their father
2 in a plane accident, I became aware of how easy it would be for someone acting
3 as a Guardian/Conservator to inappropriately utilize funds belonging to others.
4 While my experience in this area goes back to the seventies, I don't believe the
5 situation has changed that much.

6 2

7 The more recent situation in Fairbanks with the Community Action Agency of
8 Alaska is a case in point. If HB 427 had been in place prior to CAPA's
9 bankruptcy, their clients would have been in a much better position. Under this
10 bill, the financial viability of a company operating as Guardian/Conservator
11 would be available to both the Court and the licensing authority. It should be
12 noted that since current practice requires that the Court look at each case
13 separately. Although CAPA had already been removed from seven cases they
14 were still allowed to operate. Under HB 427, the yearly financial report and the
15 first case of the Court removing CAPA from a position of Guardian/Conservator
16 would have alerted the state to a possible problem.

17

18 There are a number of weaknesses in the present system that would be
19 addressed by HB 427;

- 20 1 - Currently there is no requirement that prospective Guardians/
21 Conservators have any kind of criminal record check, the danger
22 here is obvious;
- 23 2 - No system currently exists that allows judges to determine if a
24 prospective Guardian/Conservator has been found by another
25 Alaskan judge to be unqualified or for some reason had been
26 removed from a case;

1 3 - There is no requirement under the current system that requires any
2 training or appropriate experience prior to being appointed to a
3 private professional Guardianship/Conservator ship.

4 One final point that in this time of financial turmoil takes on special significance,
5 cost to the tax payers of Alaska. It is expected that no more than 10 to 15 licenses
6 would be applied for under this bill and the legislation has been designed to
7 make implementation fully self supporting. All cost to the state under this bill
8 would be covered by the required application fee.

9
10 Once again let me thank the Chairman and the Committee for this opportunity to
11 speak this afternoon in support of HB 427. I believe this is necessary, responsible
12 legislation that will help to keep our most vulnerable individuals safe.

13

14 Thank you.

**STATE OF ALASKA
OFFICE OF PUBLIC ADVOCACY**

FRANK MURKOWSKI, GOVERNOR

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ANCHORAGE, ALASKA 99501
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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
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 charge d 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.

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 respondent's 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.

Questions and Answers about Guardianship

What is a Guardian?

One who lawfully has the general care, control and custody of the person; the decision-maker of legal, medical, housing and services aspects of an incapacitated person's life.

What is a Ward?

A person who has had a guardian appointed by the court.

What is a Conservator?

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

What is a Protected Person?

A person who has had a conservator appointed by the court.

Who is an Incapacitated Person?

One whose ability to receive and evaluate information or to communicate decisions is impaired to the extent that they lack the ability to provide the essential requirements for their own health and safety.

What is an Advocate?

One who supports, defends or requests on the behalf of another. The intervention may be with client consent or with legal authority to act.

What's the difference between a Family Guardian, a Guardian Service Provider, and a Public Guardian?

A private guardian is generally a family member or close friend who is appointed for one or two people.

A professional guardian is an individual, agency or organization that provides guardianship/conservatorship services to three or more individuals and receives compensation other than reimbursement for out of pocket expenses.

A public guardian is one employed by the state to act as guardian/conservator. Public guardians are employed by the Office of Public Advocacy and are used as last resort when no private person or non-profit organization is available or willing to act in this capacity.

What is the difference between Full, Temporary, Partial, Limited, or Testamentary Guardianship?

A full guardian is one appointed to have total decision-making responsibilities for medical, housing, services, legal, and if a separate conservator has not been appointed, financial areas.

A temporary guardian is one appointed in an emergency situation for an immediate or time-limited period. An example would be an emergency appointment for an immediate life threatening medical decision or a six-month period to assist with a specific decision. Generally a full hearing with court visitor and medical expert reports will be held soon.

A partial or limited guardian is one appointed whose rights, powers, and duties are less than full guardianship and are enumerated by court order.

A guardian by testamentary appointment is one whose appointment was by a will. An example would be when a parent / guardian of a developmentally disabled child indicate in his or her will which other person would be the child's successor guardian. The successor guardian needs to request a Probate Court hearing to get signed Orders.

What is the difference between an Attorney for the Respondent and a Guardian Ad Litem?

A respondent is the alleged incapacitated person for whom a petition has been filed and their attorney represents the wishes of the respondent as opposed to the best interest of the respondent.

The guardian ad litem (or GAL) is 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, generally an attorney, is appointed if the court decides that the respondent cannot determine his own interests because of impaired ability. A GAL's duties end when guardianship proceedings are concluded.

What's the difference between a Court Expert and a Court Visitor?

The court expert or medical expert has expertise regarding the incapacity of the respondent, such as psychiatry.

The court visitor is a neutral person trained or experienced in law, medical care, mental health care, pastoral care, education, rehabilitation or social work 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 and is completely unbiased.

Both an expert and visitor are appointed in guardianship cases. Both submit a report and testify or are available to testify at the hearing.

No finding of incapacity is required for a conservatorship but a visitor may still be appointed.

What is meant by Direct Services?

Medical and nursing care, speech therapy, occupational therapy, physical therapy, psychological therapy, counseling, residential services, legal representation, recreational therapy, socialization, job training and other similar services are considered direct services.

What are Supportive Services?

A coordinated system of state or community supplied social or health devices designated to help maintain the independence of the individual. May include homemaker visits, psychiatric and medical evaluation with case management, visiting nurse, special transportation, house repair, home delivered meals, etc. Services do not

originate from a central agency, but are brought together by the individual or agency involved with the case.

What is Case Management?

A supervisory coordination usually originates in a care facility or health unit which closely monitors the physical and mental progress of a client and arranges for direct and support services.

What is a Care Coordinator?

An independent or agency person, who provides or arranges for services for the aged, adult physically disabled, developmentally disabled/mentally retarded, or children with medically complex conditions.

What are Protective Services?

A term commonly used to describe both support services provided to those in need with their consent, and legally enforced guardianship/conservatorship services that intervene in a person's life without their consent, in response to physical, emotional and financial abuse or neglect.

The State of Alaska, Adult Protective Services, investigates and attempts to resolve abuse or neglect. (Anchorage 907-269-3666).

What is Assisted Living?

Residential living that focuses on maximizing residents' quality of life by structuring care, services and environment to enhance autonomy, dignity and the right to age in place. Assisted living generally provides: three meals; 24 hour staff oversight and availability; housekeeping and laundry; assistance with eating, bathing, toileting, and walking; transportation or arranging transportation; medication management; social and recreational activities. The Division of Senior Services can provide a list of licensed homes in Alaska (907-269-3666) and out of state information is available from the National Eldercare Locator Service 1-800-677-1116.

What are Chore Services?

Chore services include housekeeping, and other necessary assistance to maintain the home in a clean, sanitary and safe condition.

What is Respite Care?

Respite care provides relief for the caregiver from caregiving duties.

Who can be a Petitioner?

Anybody can request the court for a guardian or conservator including the client. The Petition for Guardian/Conservator identifies the circumstances of the respondent's condition and set the guardianship process in motion. It can also be withdrawn.

Who is a Respondent?

A respondent is the person who has had a petition filled against them. In guardianship, this is the alleged incapacitated person.

What is Notice?

Notice is providing information to the parties in the case. This is done by mailing or delivering the documents, which are given to the court, to everyone. The legal system requires notice as may fairly and properly be expected or required.

Who are the Interested Parties in a Case?

Those include attorneys, court visitor, heirs, children, creditors, beneficiaries, devisees, and any other having a right in or claim against the estate of a ward.

What are Pro Bono and Pro Per?

Pro bono means "for good." A pro bono attorney works without charge. Pro per means legal work for oneself without benefit of counsel or attorney.

What does Stipulate Mean in Court?

It is an agreement; if all parties "stipulate" to a point or issue it becomes fact or actuality.

What is Aid to Disabled Adults?

The State's Division of Public Assistance provides funds to the elderly, blind or disabled meeting income, assets and Social Security requirements.

What is Interim Assistance?

When a guardian applies for SSI and the client has no other income, the guardian may apply for this aid from Alaska Division of Public Assistance while a decision is being made by Social Security. If eligible, they will receive \$280 (eff. 9/00) per month. This must be repaid if approved for social security benefits.

What is Social Security Annuities (SSA)?

SSA is a retirement and disability insurance for American workers. It may be available for spouse or children, if the employee is disabled or deceased.

What is Supplemental Security Income (SSI)?

Administered by the Social Security office, this benefit is based on disability, income, and resources. A person could be eligible for both SSA and SSI.

What is a Representative Payee?

The Social Security Administration can require a "rep payee" for many SSA and SSI clients. This is another person or agency that will receive the client's social security funds and is responsible for using them for the client's needs.

What is a Burial Trust Fund?

An account established for burial purposes, usually held by a bank or funeral home.

How does a Power of Attorney differ from a Guardianship?

A Power of Attorney is power granted to an attorney-in-fact to conduct any business which to client could do himself, such as banking, real estate, taxes, business transactions, or any other issue generally time-limited. The client must be capacitated and there is no court oversight. A guardianship occurs when the client can not make decision for himself and has the court reviewing the situation. The guardianship generally superseeds the POA.

What is a Durable Power of Attorney?

When a person executes a POA, which will become or remain effective in the event the client later becomes disabled. It may include conservator powers and authority to make medical decisions.

What is an Advance Directive?

A document that stating exactly which measures to be followed in the event of an incapacity or terminal illness.

What is a Living Will?

A document by which an individual, while competent, may specify that in the event there is no reasonable expectation that he/she will recover from a terminal illness or vegetative state, no extraordinary or heroic measures are to be used to prolong the act of dying; is only employed to prevent the use of life sustaining procedures.

These questions and answers came from a column in the Alaska State Association for Guardianship and Advocacy's newsletter The ASAGA Voice from 1993-1995 called "Ask Dorcas!"

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 427(HES)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title An Act relating to guardianships and RDU Occupational Licensing (117)
conservatorships;... Component Occupational Licensing
 Sponsor Representative Anderson
 Requester House Judiciary Component No. 2360

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						
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services						
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	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 CSHB 427(HES) establishes a registration program for private professional guardians and private professional conservators under AS 08.01. The assumption is that approximately 12 individuals will qualify for registration under this bill. A similar registration program with approximately the same number of licensees currently in existence has shown that operating costs will be minimal. Additionally, registration fees from private professional guardians and private professional conservators will be expected to cover any associated costs from this program.

 No new funding is required to implement this program.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144
 Division: Occupational Licensing Date/Time 4/20/04 4:24 PM
 Approved by: Edgar Blatchford, Commissioner Date 4/20/2004
 Agency: Department of Community and Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB427CS-ACS-TC-4-14-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Protection of Persons and Property BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Anderson
 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						
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CHANGE IN REVENUES ()						
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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 CSHB 427(HES).

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 4/14/04 10:26 AM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 4/14/2004
 Agency Alaska Court System

STATE OF ALASKA

OFFICE OF PUBLIC ADVOCACY

FRANK MURKOWSKI GOVERNOR

900 W. 5TH AVE., SUITE 525
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-3300
FAX: (907) 269-3535

May 3, 2004

To: Senator Therriault
Representative Anderson
Doug Wooliver

From: Josh Fink, Public Advocate *JF*

Re: House Bill 427

In the hearing held on May 3 before the Senate Judiciary Committee Senator Therriault asked whether two provisions of House Bill 427 would have a fiscal impact upon the court system. Upon review, it is clear that there would not be a fiscal impact if these provisions were to become law. They do not increase the number of reports currently required by court rule or statute.

The first provision is contained in section 9 of the bill. This section would ensure that A.S. 13.26.118(a) is interpreted in a manner consistent with the Alaska Rules of Probate Procedure. A.S. 13.26.118(a) currently requires that a guardian "submit a report to the court or request that a visitor be appointed to prepare and submit a report at least annually. A court appointed visitor shall prepare the report at least once in each three-year period." The amendment would clarify the nature of the third year visitor's report, which is to review the guardianship and not to take the place of the guardian's annual report. It would do so by eliminating the language "or request that a visitor be appointed to prepare and submit a report" and insert the language requiring the appointment of a visitor to review the guardianship every third year. This statutory change is consistent with existing Probate Rule 16(e)(1)(B), which requires the guardian to file an annual report, and Probate Rule 16(e)(2), which states that "[e]very third year, the Court Visitor shall be appointed by the court to file a report reviewing the guardianship and any conservatorship during the period since the last visitor's report"

The other provision is contained in Section 23, which clarifies that conservators are also required to file an annual report. This is not a new requirement and would not have a fiscal impact, because Probate Rule 17(e) already requires conservators to file an annual report "on May 1st of each year or as otherwise directed by the court."

In summary, both of these statutory changes are consistent with existing (and unambiguous) court rule. There is no fiscal impact for the court system because these provisions are not creating new reporting requirements. Please contact me if you have any questions.

HB

428

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: April 21, 2004

TO: Senator Ralph Seekins
Chairman, Senate Judiciary Committee

FROM: Representative Kevin Meyer *K*

RE: CS HB 428 (JUD)am Civil Penalty: Underage Alcohol Purchases

At your earliest convenience, please schedule CS HB 428 (JUD)am Civil Penalty: Underage Alcohol Purchases for a hearing in the Senate Judiciary Committee.

Under CS HB 428 (JUD)am, 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 \$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.

Thank you for your time and consideration of this request.

REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

CS HB 428 (JUD)am

“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 CS HB 428 (JUD)am 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. CS HB 428 (JUD)am 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 CS HB 428 (JUD)am 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 CS HB 428 (JUD)am will provide increases the awareness of the overall cost that alcohol and underage drinking has on our communities. CS HB 428 (JUD)am 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: March 30, 2004

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						
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CHANGE IN REVENUES ()						
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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
 Division Alaska Court System
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver
 Agency Alaska Court System

Phone 463-4750
 Date/Time 2/24/04 9:46 AM
 Date 2/24/2004

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						
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CHANGE IN REVENUES ()						
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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



FOOD & SPIRITS

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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

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.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

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."

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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.

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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, 24 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

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. NISDA 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 DF, 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.

- Initiative Partners
- National Institute on Alcohol Abuse and Alcoholism (NIH)
 - The Robert Wood Johnson Foundation
 - Office of Research on Women's Health (NIH)
 - National Center on Minority Health and Health Disparities (NIH)
 - Office of Juvenile Justice and Delinquency Prevention (DOJ)
 - Substance Abuse and Mental Health Services Administration (DHHS)
 - National Highway Traffic Safety Administration (DOT)



Making the Link

Underage Drinking and Violence

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

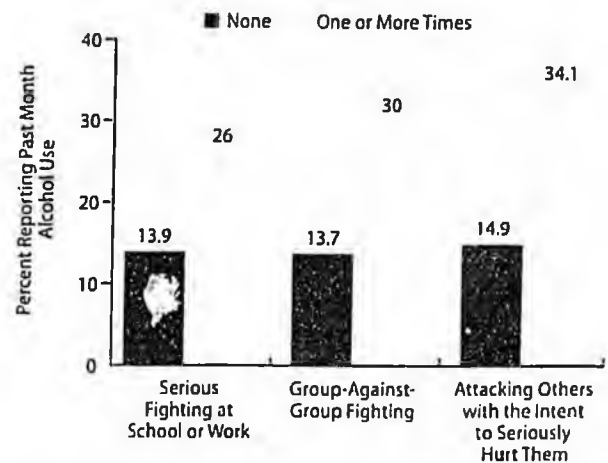
Among male high school students, 39 percent say it is acceptable for a boy to force sex with a girl who is drunk or high.⁶

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.

Initiative Partners

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Office of Juvenile Justice and Delinquency Prevention (DOJ)

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.
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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.
⁵ Swahn. Epidemiology of alcohol-related fighting among adolescents.
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



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.

Initiative Partners

National Institute on Alcohol Abuse and Alcoholism (NIH)

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Office of Research on Women's Health (NIH)

National Center on Minority Health and Health Disparities (NIH)

Office of Juvenile Justice and Delinquency Prevention (DOJ)

Substance Abuse and Mental Health Services Administration (DHHS)

National Highway Traffic Safety Administration (DOT)

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).

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.camv.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.interline.ci.lincoln.ne.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

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FOR IMMEDIATE RELEASE

Nationwide Strategy to Combat Underage Drinking Requires Shared Responsibility; Action Also Needed to Improve Compliance With Laws

WASHINGTON -- More young people drink alcohol than use other drugs or smoke tobacco, and underage drinking costs the nation an estimated \$53 billion annually in losses stemming from traffic fatalities, violent crime, and other behaviors that threaten the well-being of America's youth. Curbing underage drinking is an uphill battle because alcohol is legal and readily available to adults. To tackle the problem, a new report from the National Research Council and Institute of Medicine of the National Academies offers a comprehensive strategy

Science in the Headlines

The National Academies
Op-Ed Service

that requires a deep, shared commitment from many institutions and individuals, including alcohol manufacturers and retail businesses, the entertainment industry, and parents and other adults in local communities.

Federal and state governments should help forge the commitment to curtail alcohol consumption by minors, the report adds. For example, the federal government should do more to educate adults about existing laws and the consequences of underage drinking. Federal and state governments also should provide additional financial assistance and other support to reinforce community-based initiatives, and to research the effectiveness of the proposed strategy itself and related policies.

"All segments of U.S. society should address underage drinking in a serious, coordinated, and sustained manner," said Richard J. Bonnie, John S. Battle Professor of Law and director of the Institute of Law, Psychiatry, and Public Policy at the University of Virginia, Charlottesville, and chair of the committee that wrote the report. "We have to find effective ways to protect our nation's youth while we respect the interests of responsible adult consumers of alcohol. The recommendations in this report attempt to strike the right balance." The congressionally mandated study lays out a strategy that includes heightened adult supervision of children's behavior and calls upon the alcohol and entertainment industries to take stronger steps to shield young people from unsuitable messages about alcohol consumption. Taken as a whole, the plan would have a considerable impact, the committee said, adding that the strategy should be subject to ongoing refinement.

To fund the proposed activities and to help reduce underage consumption, Congress and state legislatures should raise excise tax rates on alcohol – particularly on beer, which studies show is the alcoholic beverage that most young people prefer. Alcohol is much cheaper today, after adjusting for inflation, than it was 30 to 40 years ago. Higher tax rates should be tied to the Consumer Price Index to keep pace with inflation. Increasing the cost of alcohol has well-documented deterrent effects on underage drinkers, the report points out.

A National Wake-Up Call

Most adults express concern about underage drinking and voice support for public policies to

curb it. Yet surveys show that youth often obtain alcohol from adults. Studies also show that many parents underestimate both the extent of the problem and their own children's alcohol-consumption habits.

States and localities should use a wide range of educational and enforcement measures to boost compliance with laws that prohibit selling or providing alcohol to children, adolescents, and young adults under the legal drinking age of 21. The aim is to deter adults and youths alike, the report says. Among the recommended steps are increasing the frequency of compliance checks, in which authorities monitor whether businesses are obeying minimum-drinking-age laws and levy fines when necessary, and requiring all sellers and servers of alcohol to complete state-approved training as a condition of employment. Likewise, the federal government should require states to achieve specified rates of retailer compliance with youth-access laws as a condition of receiving federal funds. And states should enhance efforts to prevent and detect the use of false identification by minors who want to purchase alcohol – for example, by issuing driver's licenses and state ID cards that can be electronically scanned.

In addition, states that allow Internet sales and home delivery of alcohol should adopt regulations that require customers to sign statements verifying their identity and age at the time of delivery. At the local level, police, working with community leaders, should create policies for detecting and shutting down underage drinking parties, the report says.

State and local leaders should develop efforts to reduce underage drinking that are tailored to specific circumstances of the problem in their communities, the report says. A broad range of public and private organizations and institutions, including the federal government, should encourage and fund community efforts that have a solid science base.

Likewise, the federal government should fund and actively support the development of a national media campaign to encourage parents and other adults to take steps in their own households and neighborhoods to discourage underage drinking. Officials should carefully craft this activity to make sure that it would reach a diverse audience, the report says.

All intervention and education programs, the committee stressed, should be rigorously

evaluated.

Roles for Alcohol and Entertainment Industries

A substantial portion of alcohol advertising reaches an underage audience or is presented in a style that is attractive to youth, the report says. For example, television ads for alcohol often appear during programs where the percentage of underage viewers is greater than their percentage in the overall U.S. population.

The committee recommended that trade associations in the alcohol industry and individual companies strengthen their advertising codes to prohibit placement of commercial messages in venues where a large portion of the audience is underage. These groups also should establish independent, external review boards to investigate complaints about ads and enforce codes. In 1999 the Federal Trade Commission issued similar recommendations urging the industry to toughen its advertising standards for alcoholic beverages. For years, those standards have permitted ad placement in media where adults constitute at least 50 percent of the audience. The industry is expected to soon announce tougher standards that will restrict marketing to audiences with a much larger proportion of adults.

In addition, alcohol companies, advertising firms, and commercial media should refrain from marketing practices -- such as certain product designs or promotion techniques -- that may appeal to young people, the report says.

The alcohol industry also should join with private and public entities to create and fund an independent, nonprofit foundation that is focused solely on preventing and reducing underage drinking, the committee said. The industry currently invests in programs that were established with that stated goal; however, the results of these programs typically are not assessed using rigorous scientific methods.

The entertainment media have key roles to play, too. Officials in the music, television, and film industries should use rating systems and codes to reduce the likelihood that large numbers of young listeners and viewers will be exposed to unsuitable messages about alcohol consumption -- even when adults are expected to make up the majority of the audience. The

Motion Picture Association of America, for instance, should consider content about alcohol use when rating films, and assign mature ratings for movies that portray drinking in a favorable light, the report says.

The overall goal of the committee's broad strategy is to promote public awareness of the importance of reducing underage drinking, as well as greater accountability in mass communication. To this end, Congress should provide funding for the U.S. Department of Health and Human Services to routinely track youth exposure to alcohol ads by monitoring advertising practices. Likewise, HHS should regularly review representative samples of movies, TV programs, music recordings, and videos offered to audiences that are 15 percent or more underage. Findings from this work should be reported to Congress and the public, the committee said. Moreover, HHS should issue a comprehensive report to Congress each year on trends in underage drinking and progress in reducing the problem.

Larger Government Investments Needed

The use of alcohol among adults is deeply rooted in American culture, and beliefs vary widely about alcohol consumption and expectations for young people. But underage drinking is dangerous, the report emphasizes. It is a significant factor in youth traffic fatalities, and associated with suicide, other violence, and academic failure. When people start drinking in childhood or adolescence, they increase their risk of developing alcohol-related problems as adults.

In the 2002 Monitoring the Future survey, a federally sponsored study, about 72 percent of 12th graders and 39 percent of eighth graders reported that they had consumed some alcohol in the past year. That study also showed that more than a quarter of high school seniors had consumed five or more drinks in a row in the previous two weeks.

Federal and state excise taxes are potentially important tools for preventing and reducing underage drinking and its harmful consequences, the committee concluded. Extensive research indicates that even small changes in these tax rates can decrease the prevalence of drinking among youths, who tend to have limited discretionary income. Current federal excise tax rates of \$2.14 per 750-ml. bottle of 80-proof spirits, 33 cents per six pack of beer, and 21

cents per bottle of wine represent a long downward slide in the value of these taxes. Further, the federal government needs to enhance and better organize research in this area, the report says. A federal, interagency coordinating committee should be formed, with the secretary of HHS serving as chair, to provide national leadership on the topic. HHS should create a National Training and Research Center on Underage Drinking, and collect more detailed data on the problem -- gathering information on regional trends and on brands of alcohol that are popular among young people, for instance. HHS also should issue annual reports on progress in implementing the proposed strategy.

State policy-makers should designate an agency to spearhead and coordinate their activities and programs in this area, the report says. Also, residential colleges and universities, which face serious alcohol-related problems among students under 21, should develop, adopt, and evaluate comprehensive prevention approaches in partnership with local communities.

The report was sponsored by the U.S. Department of Health and Human Services. The National Research Council and the Institute of Medicine are private, nonprofit institutions that provide science and health policy advice under a congressional charter. The Research Council is the principal operating arm of the National Academy of Sciences and the National Academy of Engineering. A committee roster follows.

Pre-publication copies of **Reducing Underage Drinking: A Collective Responsibility** are available from the National Academies Press; tel. 202-334-3313 or 1-800-624-6242 or on the Internet at <http://www.nap.edu>. The cost of the report is \$50.00 (prepaid) plus shipping charges of \$4.50 for the first copy and \$.95 for each additional copy. Reporters may obtain a copy from the Office of News and Public Information (contacts listed above).

NATIONAL RESEARCH COUNCIL
and
Institute of Medicine
Board on Children, Youth, and Families

Committee on Developing a Strategy to Reduce and Prevent Underage Drinking

This document was supported by the Office of Juvenile Justice and Delinquency Prevention, in conjunction with its Enforcing Underage Drinking Laws program. The opinions in this document do not necessarily reflect the official position of the US Department of Justice.

Using Alcohol Policy to Reduce Underage Drinking: Strategies that Work

The Underage Drinking Enforcement Center
Pacific Institute for Research and Evaluation
Calverton, Maryland

To a large extent, community environments determine whether and how much young people drink.¹ This environment consists of the community's alcohol-related norms and regulations and the availability of alcohol to young people (see figure). Policymakers and concerned citizens can help to shape their community environment to support healthy choices about alcohol use.

Controlling Alcohol Availability to Young People

There is no better established principle in prevention than this: If a community makes it more difficult for young people to obtain alcohol, underage drinking is reduced. In addition, because younger drinkers obtain alcohol from older people (friends, siblings, parents, and other adults), reducing the *overall* availability of alcohol in a community will reduce alcohol problems among young people.

- *Enforcement of laws against underage drinking* – Underage drinking laws are among our most important tools to reduce underage drinking, and the better the enforcement, the better the results. Enforcement efforts are most efficient and effective when they focus on adults (retailers, parents, older friends) who provide alcohol to underage drinkers. Nevertheless, enforcement aimed at young people themselves can send a message about community norms and may deter them from attempting to buy alcohol.
- *Reducing overall availability* – Reducing the overall availability of alcohol makes alcohol

less convenient for young people to obtain. It also sends a message to young people that alcohol does not have to be the central feature of social life. One important way to reduce the overall availability is to reduce the number of alcohol outlets relative to community size and population. Communities can also prohibit alcohol outlets in areas that are frequented by young people, for example, near schools. Finally, communities can restrict alcohol availability at public events, such as fairs and festivals or in other public places, such as beaches and parks.

Controlling the Ways in Which Alcohol Is Advertised and Promoted

Alcohol advertising and promotions are highly visible features of most community landscapes. The message often conveyed to young people is that drinking is expected, acceptable, and desirable. States and communities can reduce these messages through a variety of strategies:

- Controlling the location and content of outdoor advertising
- Prohibiting the distribution or sale to minors of alcohol promotional material (e.g., T-shirts).
- Restricting or eliminating alcohol industry sponsorship of local community events.

¹ *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*, Washington, D.C.: OJJDP, USDOJ. Presented at OJJDP National Leadership Conference, 7/11-14/99.

- Community environments can exert powerful controls on drinking among young people
- If a community makes it more difficult for young people to obtain alcohol, underage drinking is reduced
- Alcohol advertising and promotions too often communicate to young people that drinking is expected, acceptable, and desirable.

The National Highway Traffic Safety Administration, under the Department of Transportation, provides a number of resources for the prevention of underage drinking, including the Community How To Guides On Underage Drinking Prevention. NHTSA also funds the National Association of Governors' Highway Safety Representatives' Underage Drinking Prevention Project (UDPP). The UDPP uses a comprehensive, community-based approach to address the issue of underage drinking.

The Effects of Lowered Legal Blood Alcohol Limits for Young Drivers

Alexander Wagenaar, Ph.D.*, Patrick O'Malley, Ph.D.***, and Colette

be detected.

Tapert, S., Brown, G., Kinderman, S., Cheung, E., Frank, I., and Brown., S. fMRI measurement of brain dysfunction in alcohol-dependent young women. *Alcoholism: Clinical and Experimental Research*, 25(2):236-245, 2001.

See Science, Kids, And Alcohol - Heavy Alcohol Use and Nervous System Development.

- Evidence is increasing that alcohol-dependent young people experience deficits in cognitive functioning
- Functional magnetic resonance imaging (fMRI) revealed changes in brain functioning that may underlies these deficits
- Heavy drinking patterns leading to withdrawal pose particular threats to brain functioning in young women.

This document was supported by the Office of Juvenile Justice and Delinquency Prevention, in conjunction with its Enforcing Underage Drinking Laws program. The opinions in this document do not necessarily reflect the official position of the US Department of Justice.

Enforcement of Underage Drinking Laws: Strategies that Work

The Underage Drinking Enforcement Center
Pacific Institute for Research and Evaluation
Calverton, Maryland

Laws establishing 21 as the minimum purchase age for alcohol (adopted in all states by 1988) have been shown to be extremely effective in reducing underage alcohol consumption and its consequences¹. According to the National Highway Traffic Safety Administration, the 21-year-old purchase age has saved more than 19,000 young lives through reductions in alcohol-related traffic crashes. There have also been reductions in injuries, homicides, suicides, and other alcohol-related problems.^{2,3}

Despite the effectiveness of 21-year-old purchase age laws, more vigorous enforcement would further reduce underage drinking and save even more young lives. Evaluations have shown repeatedly that when the following techniques are applied, rates of sales to minors drop dramatically:

Enforcement aimed at retailers

Because there are many fewer sellers of alcohol than there are purchasers, strategies aimed at retailers are efficient. They are also very successful in reducing sales of alcohol to minors.⁴

Enforcement aimed at retailers includes the following key elements:

- Vigorous use of compliance checks
- Applying appropriate sanctions to merchants who sell to underage individuals
- Educating merchants regarding their responsibilities under the law
- Developing media coverage and community support for enforcement.

Enforcement aimed at other sources of alcohol

Young people obtain alcohol from many sources, including older friends and siblings, adults who agree to buy for them, and even parents. Some strategies for reducing these sources of alcohol include:

- Enacting keg registration laws that make the purchasers of kegs of beer responsible if minors are served from those kegs.
- Enforcing laws that prohibit buying alcohol for minors and citing adults who purchase for them
- Holding adults responsible if alcohol is served to minors in their homes
- Conducting enforcement campaigns to prevent or safely disperse parties where minors are drinking.

Enforcement aimed at young people

Little research is available demonstrating the effectiveness of enforcement aimed at young people. However, enforcement programs, such as "Cops in Shops," send a message about community norms and may deter young people from attempting to buy alcohol. Such youth only-approaches should be used in combination with other proven strategies.

O'Malley, P., and Wagenaar, A. Effects of minimum drinking age laws on alcohol use, related behaviors, and traffic crash involvement among American youth 1976-1987. *Journal of Studies on Alcohol*, 4:807-818, 1991

Jones, N.; Pieper, C.; and Robertson, L. The effect of legal drinking age on fatal injuries of adolescents and young adults. *American Journal of Public Health* 82:112-115, 1992.

³ Parker, M., and Rebhun, L. *Alcohol and Homicide: A Deadly combination of Two American Traditions*. Albany, NY: State University of New York Press, 1995.

**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

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**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 Consen/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 Treatmer.†	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	√			√	√	√	√	√	√				