

★ Visit [www.udetc.org](http://www.udetc.org) for the latest information on underage drinking. ★

### New Product Release from Johns Hopkins Regarding Use of Digital Media to Target Youth

The Center on Alcohol Marketing and Youth (CAMY) at the Johns Hopkins Bloomberg School of Public Health has released new CAMY products related to alcohol industry shifts into social media as forms of marketing. A 4-part YouTube video series has been developed that charts the marketing push into digital markets such as Facebook, YouTube, and Twitter. A new CAMY brochure was also released providing a data snapshot of underage youth exposure to alcohol marketing in magazines, social media and on radio and television. The full YouTube videos can be found here for viewing or download:

<http://www.youtube.com/user/JohnsHopkinsSPH>

### RESOURCE ALERT LEGAL CASE

***“Does the State Law of New York, which controls the regulation of selling or giving alcohol to minors, preempt a local law or ordinance that is focused on individuals hosting underage alcohol party?”***

July 19, 2011, the Justice Court of Town of Hunter located in Greene County, rendered their opinion in the matter of the People v. Valentine. The defendants jointly moved for an order dismissing the charges of unlawfully dealing with a child under penal law section 260.20 (2) on the grounds that an affirmative defense has been established as a matter of law.

With the “Law of the Case” decided, the Valentine’s ask the Court to dismiss the violation of Greene County Local law No. 1 of the year 2007, which makes it an offense to “permit individuals under age 21 to be at “an open house party at a residence controlled by the [defendants,] which [defendants] are aware that alcohol is being served or possessed by such minors.” The Valentine’s argued The State of New York has preempted the entire field of regulating the giving or selling of alcohol to minors, in various statutes, which is essentially the same conduct as prescribed by the local ordinance or law with which they were charged.

This case will take the reader into the Court’s analysis of the issues developed around the question of preemption when the defendant’s ask the Court to drop their local charges. The case in its entirety can be found by simply visiting the below link: <http://www.udetc.org/documents/ResourceAlerts/Jan2012case.pdf>

**Did you Know?** That there is still time to let us know how the training center can support your efforts to help your communities enforce underage drinking laws and reduce youth access to alcohol by participating in our assessment. Please visit this link by January 14<sup>th</sup> to participate in this most important service assessment: <http://www.surveymonkey.com/s/QP5633V>

### NATIONAL ELECTRONIC WEBINARS

January 2012

#### ***Youth as Advocacy Allies: A Framework for Involving Youth in Prevention Strategies***

Date: Thursday, January 19, 2012

Time: 3:00-4:15 p.m. ET

Speaker: Aidil Ortiz Collins, Team Lead; Youth Empowered Solutions (YES!); Chapel Hill, North Carolina

Happy New Year! What a better way to start the New Year than by developing stronger relationships with youth. Join us in a discussion about cultivating successful and sustainable relationships with youth. Even adults and youth with the best of intentions struggle with just what “youth participation” means. What does it look like? How does it happen? Having youth “around” is not the same as working with youth in an empowering way to create environmental change. This call will review the YES! Youth Empowerment Model which has been the basis for nationally recognized work done through a youth-adult partnership. With available handouts and resources we will share the 7 principles of youth engagement and challenge the common myths of youth participation. This webinar will also provide a youth involvement checklist which will guide you and reveal a pathway for progress so that you can develop and implement a measurably successful and sustainable youth group/coalition. This is a framework that may help increase the capacity of your organization to collaborate with youth while empowering them to make community change.

\*Visit [www.udetc.org/audioconfregistration.asp](http://www.udetc.org/audioconfregistration.asp) to register

### Youth Spotlight! – New Resource Alert Feature

Welcome to the NEW Youth Spotlight! The UDETC appreciates the impact youth have in preventing underage drinking. At the 2011 National Leadership Conference two awards were given out for the significant work done by youth in preventing underage drinking. The awards recognized their efficacy in applying environmental strategies and improving their communities. The individual Ms. **Hilary Bounds** (MS) and the group **Dover Youth to Youth** (NH) awardees show leadership and have contributed to efforts in reducing youth access to alcohol. In future Resources Alerts we will spotlight EUDL youth, groups and coalitions and share their contributions in preventing underage drinking by making a major contribution of personal time, passion and leadership. Come back and check out our next spotlight!

**To print a copy of this month’s Resource Alert visit:**

[www.udetc.org/documents/ResourceAlerts/ResourceAlert0112.pdf](http://www.udetc.org/documents/ResourceAlerts/ResourceAlert0112.pdf)

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

v.

KEITH VALENTINE, Defendant.

THE PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

v.

CYNTHIA VALENTINE, Defendant.

xx/11

Justice Court of Town of Hunter, Greene County.

Decided July 19, 2011.

Richard Mott for the motion.

Keith Valentine, for the defendant.

Timothy Murphy for the Motion.

Cynthia Valentine for the defendant.

In Opposition Michael Cozzolino, special prosecutor for the people.

WILLIAM M. SIMON, J.

These motions are consolidated for one opinion based upon the fact that the issues in both cases are the same.

The defendants are both charged in information's with two counts arising out of a graduation party held at their residence in Greene County New York in June of 2010 . The charges stem from an accusation that various minors were in attendance at the graduation party and that alcoholic beverages were supplied to them by allowing them access to various coolers that contained beer. The first charge is the misdemeanor of Unlawfully dealing with a child under penal law section 260.20 and the second charge is the violation of Hosting a party in violation of Greene County Local Law number 1 of 2007 at which the host has knowledge that alcohol beverages are being consumed by minors.

The defendants jointly move for an order dismissing the charges of Unlawfully dealing with a child under penal law section 260.20 (2) on the grounds that an affirmative defense has been established as a matter of law. The prosecution acknowledges all the essential elements of the affirmative defense as created by statute and that such defense has been established as a matter of law by the production of a certificate attesting to the defendants attendance at alcohol awareness training program approved by the State... The relevant statute at issue is Penal Law section 260.20 which provides as follows;

§ 260.20 Unlawfully dealing with a child in the first degree.

A person is guilty of unlawfully dealing with a child in the first degree when:

1 ...omitted

2. He gives or sells or causes to be given or sold any alcoholic beverage, as defined by section three of the alcoholic beverage control law, to a person less than twenty-one years old; except that this subdivision does not apply to the parent or guardian of such a person or to a person who gives or causes to be given any such alcoholic beverage to a person under the age of twenty-one years, who is a student in a curriculum licensed or registered by the state education department, where the tasting or imbibing of alcoholic beverages is required in courses that are part of the required curriculum, provided such alcoholic beverages are given only for instructional purposes during classes conducted pursuant to such curriculum. It is no defense to a prosecution pursuant to subdivision two of this section that the child acted as the agent or representative of another person or that the defendant dealt with the child as such. It is an affirmative defense to a prosecution pursuant to subdivision two of this section that the defendant who sold, caused to be sold or attempted to sell such alcoholic beverage to a person less than twenty-one years old, had not been, at the time of such sale or attempted sale,

convicted of a violation of this section or section 260.21 of this article within the preceding five years, and such defendant, subsequent to the commencement of the present prosecution, has completed an alcohol training awareness program established pursuant to subdivision twelve of section seventeen of the alcoholic beverage control law. A defendant otherwise qualifying pursuant to this paragraph may request and shall be afforded a reasonable adjournment of the proceedings to enable him or her to complete such alcohol training awareness program. Unlawfully dealing with a child in the first degree is a class A misdemeanor.

Both the defense and prosecution agree that the documentary evidence proves the affirmative defense as a matter of law, and pursuant to the oral argument conducted on May 25, 2011 in open court and with the consent and approval of the special prosecutor, the court dismissed both counts of unlawfully dealing with a child against each defendant.

It is therefore the "Law of The Case" that the affirmative defense contained in section 260.20 of the NYS Penal Law, has been proven "as a matter of Law".

The defendants next argue that the violation of Greene County Local law No. 1 of the year 2007, which makes it an offense to "permit individuals under age 21 to be at" An open house party "at a residence controlled by the defendants, which defendants are aware that alcohol is being served or possessed by such minors" should be dismissed because The State of New York has pre-empted the entire field of regulating the giving or selling of alcohol to minors, in various statutes, which is essentially the same conduct as prescribed by the local law.

The defendants argue that the Greene County Local Law #1 of 2007, has been pre-empted by various New York State Statutes dealing with the illegal possession, service of and consumption of Alcoholic Beverages by minors and that the Penal Law inclusion of an affirmative defense to section 260.20 creates a similar affirmative defense for all offenses based on the same conduct and that The state legislature intended the affirmative defense to be a statewide mandate for alcohol awareness training for individuals charged with the same conduct as a first offense.

The defendants further argue that Greene County Local Law # 1 of 2007 is in contradiction to or in conflict with State Law and therefore the State law should only apply.

The defendants also argue that the sole remaining charge under the Greene County Local Law should be dismissed in the Interest of Justice because the defendants have complied with the alcohol awareness training contained in the amendment to the NYS Penal Law, which defense post dates the Greene County Local Law and therefore was not considered by the Greene County Legislature when they passed the law and that continued prosecution of the Local Law would serve no useful purpose in view of defendants compliance with alcohol awareness training and certification.

## OPINION

While the state statute Penal Law 260.20 is directed at individuals who sell or give alcohol to minors the Greene County Local law is directed at Social hosts in "control of a residence" who have knowledge that minors are possessing or consuming alcoholic beverages at their residence. The penal law statute is directed at sellers and givers of alcohol to minors. The local Law is aimed at a different but similar class of individuals who "Control a residence" with knowledge that alcohol is being consumed by minors regardless of who supplied or gave the alcohol to the minor. The distinction may be very subtle and in some cases non-existent. But nonetheless it is a real distinction founded in fact . The perceived problem in Greene County was hosts in control of residence (Private non-licensed premises) who permit parties regardless of their age (the host) and who allow minors to use their residence, without necessarily supplying them with alcohol but permitting the knowing use of alcohol at their residence. For example the minor may bring the alcohol for himself and or others under the Greene County Law this would be prosecutable if the host was aware of it. On the other hand the state Penal Law Statute would not apply in that situation.

I can find no General intent, in the numerous laws of the State of New York that deal with underage consumption of alcohol, expressing any intention to pre-empt the field of regulating Individuals who on their own private premises allow alcohol to be consumed by minors. The State statutes deal with sellers or other providers of alcohol and licensed premises, no law is aimed at hosts at private premises who permit alcohol to be consumed by minors.

The attorney General has considered this exact issue in an informal opinion

Informal Opinion No. 2006-2

2006 NY Op. (Inf.) Att'y Gen. 2; 2006 NY AG LEXIS 4

As the Court of Appeals found in *Vatore v. Commissioner of Consumer Affairs*, 154 Misc 2d 149 (NY Sup. Ct. 1992), rev'd, 192 AD2d 520 (2d Dep't 1993), rev'd, 83 NY2d 645 (1994), with respect to the Adolescent Tobacco-Use Prevention Act, we have found no expression of need for uniform statewide control in the legislation regulating access to alcoholic beverages by minors. Moreover, like the Court of Appeals in *Vatore*, we believe that the regulatory scheme is not so broad and detailed so as to require the conclusion that the Legislation has precluded local regulation in the area. Indeed, the state regulatory scheme with respect to access to alcoholic beverages by minors is similar to that determined by Supreme Court and affirmed by the Appellate Division not to be preemptive in *Vatore*. It regulates and prohibits particular behavior of specified individuals but does not constitute a comprehensive scheme regulating all aspects of access to alcoholic beverages by minors, and it is silent with respect to providing access to private premises on which alcohol is available. Because we believe the legislative scheme contains no clear indication of an intent to preclude local legislation in the field of access to alcoholic beverages by minors, we are of the opinion that local legislation of the type proposed by the [\*18] Town is not preempted by state law.

Since Greene County Local Law #1 of 2007 is aimed at social hosts in control of a residence who have knowledge of alcohol being consumed on premises under their control, as opposed to the prohibition by the State of New York directed at the sellers and or givers, of alcohol to minors the two of laws while seeking to prohibit similar kinds of conduct are in fact addressed to different classes of people.

Therefore it is my conclusion that Greene County has not been preempted by state statute from passing a social host law and the statute is in all respects a valid exercise of the legislative prerogative of the Greene County Legislature. It is therefore the prerogative of the Greene County Legislature to consider permitting an affirmative defense such as in the penal law 260.20 affirmative defense . The Greene County Legislature is of course free to consider it in light of this decision but I am not persuaded by the defendants arguments that I have the power to compel a reading into the statute of an affirmative defense that the legislature did not itself debate and pass...

We now turn to address the other contentions In the case at bar to determine if a dismissal is warranted in the Interest of Justice this court must consider the statutory factors set forth in Criminal Procedure Law section 170.40 In making this determination the court has used the affidavits submitted for and against the motion as well as the accusatory instruments and all supporting depositions filed in support thereof.

The text of the law permitting the filing of this motion is as follows;

Section 170.40. Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; in furtherance of justice.

1. An information, a simplified traffic information, a prosecutor's information or a misdemeanor complaint, or any count thereof, may be dismissed in the interest of justice, as provided in paragraph (g) of subdivision one of section 170.30 when, even though there may be no basis for dismissal as a matter of law upon any ground specified in paragraphs (a) through (f) of said subdivision one of section 170.30, such dismissal is required as a matter of judicial discretion by the existence of some compelling factor, consideration or circumstance clearly demonstrating that conviction or prosecution of the defendant upon such accusatory instrument or count would

constitute or result in injustice. In determining whether such compelling factor, consideration, or circumstance exists, the court must, to the extent applicable, examine and consider, individually and collectively, the following:

- (a) the seriousness and circumstances of the offense;
- (b) the extent of harm caused by the offense;
- (c) the evidence of guilt, whether admissible or inadmissible at trial;
- (d) the history, character and condition of the defendant;
- (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant;
- (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense;
- (g) the impact of a dismissal on the safety or welfare of the community;
- (h) the impact of a dismissal upon the confidence of the public in the criminal justice system;
- (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion;
- (j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

The court will review and comment upon each of the statutory factors as follows.

(a) the seriousness and circumstances of the offense; a review of all the papers and accusatory instruments reflect that the offense is a violation of law the penalty is a fine not to exceed \$250.00. The more serious offense that has been dismissed because of an affirmative Defense was a misdemeanor. Therefore the remaining charge is a comparatively less serious charge under New York Law and is non-criminal in nature.

(b) the extent of harm caused by the offense; While there was certainly the potential for harm if the allegations are true, in this case there was no actual harm to anyone or any property either alleged or required to be alleged in the papers and no evidence that anyone was harmed in any way.

(c) the evidence of guilt, whether admissible or inadmissible at trial; Since this charge would require a non-jury trial the court has not reviewed the evidence of guilt other than to review the accusatory instruments and any facts raised in the affidavits; the court believes that if the allegations are true as alleged they are stated sufficiently to establish a prima facia case.

(d) the history, character and condition of the defendant; Each of the defendants are believed by the court to have no history of criminal or bad behavior. Cynthia Valentine is 46 years of age a business person who has two children age 18 and 12. Keith Valentine is a business person age 47 with two children. Both defendants are long time and civic minded residents of Greene County.

(e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest and prosecution of the defendant; The court is not aware of any evidence of any such conduct on the part of law enforcement agents.

(f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense; The court sees no benefit to society or to the defendants in imposing the fine required by law for this offense an alternative jail sentence of up to 15 days in jail would not appear to be a valid exercise of discretion in this case..

(g) the impact of a dismissal upon the confidence of the public in the criminal justice system; Since one of the defendants is a public official there undoubtedly will be some in this community who believe that special treatment has been accorded to that defendant. However being a public official is not a statutory bar to the granting of a motion to dismiss in the interest of Justice. If being a public official was a bar the New York State legislature can correct that and exclude public officials from being eligible for such a dismissal. The court will base its decision of the statutory factors and will not be dissuaded from granting relief to the one defendant simply because he is a public official. In view of the fact that both defendants have undergone alcohol awareness training the court believes the impact of a dismissal to be minimal and that the vast majority of the

public will be buoyed by the fact that fair treatment can be addressed by Judicial discretion in a motion such as this rather than relying on robotic rigidity in a case that seems to warrant the relief requested.

(h) the impact of a dismissal on the safety or welfare of the community; The court does not believe there will be any impact on the safety or welfare of the community.

(i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion; Unknown.

(j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.

This court believes that the New York State Legislature in the year 2010 after the Greene County Legislature passed the local law that is the subject of this motion, decided that alcohol awareness education was the appropriate disposition to individuals who commit the crime of "Giving or selling alcohol to a minor" for a first offense only. The legislative notes indicate that the purpose was to stem the tide of underage drinking and that the program of alcohol awareness training previously established under the ABC law for State licensees was an effective means of stemming the problem of underage drinking.

The legislature was so convinced that this was the appropriate disposition that it provided that a defendant be given a mandatory adjournment of the case to afford him the opportunity to obtain the training. The following is the text of that law:

260.20 It is an affirmative defense to a prosecution pursuant to subdivision two of this section that the defendant who sold, caused to be sold or attempted to sell such alcoholic beverage to a person less than twenty-one years old, had not been, at the time of such sale or attempted sale, convicted of a violation of this section or section 260.21 of this article within the preceding five years, and such defendant, subsequent to the commencement of the present prosecution, has completed an alcohol training awareness program established pursuant to subdivision twelve of section seventeen of the alcoholic beverage control law. A defendant otherwise qualifying pursuant to this paragraph may request and shall be afforded a reasonable adjournment of the proceedings to enable him or her to complete such alcohol training awareness program.

It is clear that the Greene County Legislature when it passed the local law could not have considered the impact of the affirmative defense (Passed in 2010) in the Penal Law of the State of New York, because the affirmative defense did not exist at the time of the passing of the local law in 2007. Both defendants have complied with the affirmative defense to a New York State Penal law violation prohibiting such prosecution under identical facts. The Special Prosecutor in his affirmation has conceded that the "conduct charged in this case under the Penal Law and the Greene County Local Law is identical". The purpose for which the Greene County Legislature passed local Law#1 of 2007 was to stop or reduce underage drinking in Greene County .The New York state legislature saw that as the very purpose for which the affirmative defense was passed in 2010. This court concludes that no useful purpose would be served by prosecuting defendants for the local law violation under the unique individual facts of the present case and considering all of the factors collectively as stated above.

Conclusion, based upon an individual and a collective analysis of the factors required for a dismissal in the interest of Justice this court finds the relief is warranted and that no useful purpose would be served in the continued prosecution of two individuals that have demonstrated their entitlement to the relief.

Therefore the charges of violation of Greene County Local Law #1 of the year 2007 as to Keith Valentine and Cynthia Valentine, are dismissed in the Interest of Justice.

This constitutes the decision and Order of this Court.

SO ORDERED.



# National Webinars Enforcing Underage Drinking Laws Program

The OJJDP Audio-TELECONFERENCE Series

## 2012 National Webinar Calendar

January 19, 2012

3:00 – 4:15 p.m. Eastern Time

### ***Youth as Advocacy Allies: A Framework for Involving Youth in Prevention Strategies***

Happy New Year! What a better way to start the New Year than by developing stronger relationships with youth. Join us in a discussion about cultivating successful and sustainable relationships with youth. Even adults and youth with the best of intentions struggle with just what “youth participation” means. What does it look like? How does it happen? Having youth “around” is not the same as working with youth in an empowering way to create environmental change. This call will review the YES! Youth Empowerment Model which has been the basis for nationally recognized work done through a youth-adult partnership. With available handouts and resources we will share the 7 principles of youth engagement and challenge the common myths of youth participation. This webinar will also provide a youth involvement checklist which will guide you and reveal a pathway for progress so that you can develop and implement a measurably successful and sustainable youth group/coalition. This is a framework that may help increase the capacity of your organization to collaborate with youth while empowering them to make community change.

***March 15, 2012: Costs of Underage Drinking***

***April 26, 2012: Brain Research***



# Tell us your webinar ideas!

Do you have an Underage Drinking Topic that would make a great National Webinar? Send us your suggestions at [udetc@udetc.org](mailto:udetc@udetc.org) and put ‘Webinar Topic Suggestion’ in the subject line!

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# Enforcing Underage Drinking Laws Program



## UDETC National Webinars

### TOPIC

#### Youth as Advocacy Allies: A Framework for Involving Youth in Prevention Strategies

Happy New Year! What a better way to start the New Year than by developing stronger relationships with youth. Join us in a discussion about cultivating successful and sustainable relationships with youth. Even adults and youth with the best of intentions struggle with just what "youth participation" means. What does it look like? How does it happen? Having youth "around" is not the same as working with youth in an empowering way to create environmental change. This call will review the YES! Youth Empowerment Model which has been the basis for nationally recognized work done through a youth-adult partnership. With available handouts and resources we will share the seven principles of youth engagement and challenge the common myths of youth participation. This webinar will also provide a youth involvement checklist which will guide you and reveal a pathway for progress so that you can develop and implement a measurably successful and sustainable youth group/coalition. This is a framework that may help increase the capacity of your organization to collaborate with youth while empowering them to make community change.



### DATE

January 19, 2012

### TIME

3:00-4:15 p.m. ET

### PRESENTER

**Presenter:** Aidil Ortiz Collins, Team Lead; Youth Empowered Solutions (YES!); Chapel Hill, North Carolina

**Email:** [aidil@youthempoweredolutions.org](mailto:aidil@youthempoweredolutions.org)

**Phone:** (919) 229-8019

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