

Legal Considerations Related to Underage Drinking

A. Federal, State, and Local Components of Alcohol-Related Policy

Public policy regulating the problems and consequences of underage access to, and use of, alcoholic beverages is a matter of federal, state, and local law.

From 1919 until 1933, federal and state regulation of alcohol-related policy derived from the 18th Amendment of the United States Constitution, prohibiting the “manufacture, sale, or transportation of intoxicating liquors” in the United States and its territories. For instance, prior to federal Prohibition, states did not hold retailers liable for injuries caused by intoxicated patrons to whom they had been served alcohol. In response to the passage of the 18th Amendment, many states passed laws imposing civil liability on dram shop owners for injuries caused by intoxicated patrons to whom the owner had sold alcohol.

Since 1933, following repeal of Prohibition with the passage of the 21st Amendment, states play the primary regulatory role in regulating the sale of alcoholic beverages, with the federal government principally regulating the practices of the producing industry. Section 8 of Article I of the federal Constitution authorizes the federal government to regulate commerce “among the several States” and to “lay and collect Taxes,” whereas the 21st Amendment expressly makes “transportation or importation” of alcoholic beverages a matter of individual state law.

Although the scope of its regulatory role has narrowed since repeal of Prohibition, the federal government has sole control over regulation of alcoholic beverages on areas subject to federal control, such as public lands and military bases. In addition, the federal government influences state policy by creating financial incentives such as requiring the withholding of federal highway funding in the event that a state allows consumption of alcohol by persons under 21 years of age. Despite this mediating influence of overlapping federal policy on state policy, state alcohol policy varies across the 50 states and the District of Columbia and even may be at variance with federal policy. (Pokorny, et al., 2002; Wagenaar, et al., 2005; Wittman & Hilton, 1998.)

Local jurisdictions, such as cities and counties, have the authority to regulate the activities of alcohol retailers and alcohol use or consumption, but the extent of that power varies, depending on the degree of regulatory authority a given state allows its local governments to exercise. For instance, in Nevada, the regulation of alcoholic beverages is a matter of local concern (Nev. Rev. Stats. 202.020), but in Texas, local cities and counties are severely restricted in their power to make licensing decisions regarding alcohol sales (Tex. Alco. Bev. Code § 109.57). Nevertheless, local jurisdictions have substantial authority as a result of their inherent “police powers” to regulate, through the passage of ordinances, the health, safety, and welfare of their residents and, thus, to regulate the problems of alcohol use in their communities.

Given the substantial discretion of cities in the exercise of “police powers,” the demographic diversity across states especially densely populated ones, variation in community experiences with alcohol-related problems and consequences, differing levels among cities of financial commitment to local enforcement of alcohol policy, and

differing degrees of willingness of publicly elected officials to enact potentially divisive or controversial legislation, there is considerable variation in the form, substance, and local implementation of alcohol policy across states and sometimes within a single state.

B. Minimum Legal Drinking Age

In 1984, the National Minimum Drinking Age Act required states to enact a minimum age of 21 years for purchase or public possession of alcohol or risk losing federal highway funds. Since 1987, the minimum legal drinking age (MLDA) in the US has been 21 years in all 50 states and the District of Columbia. The available studies show that increasing the MLDA significantly decreased drinking and drinking problems among young people (Dee, 1999; DuMouchel et al., 1987; Klepp et al., 1996; O'Malley & Wagenaar, 1991; Saffer & Grossman, 1987a,b; Wagenaar, 1981, 1986; Wagenaar & Maybee, 1986; Yu, Varone, & Shackett, 1997).

C. Commercial and Social Access to Alcohol by Persons Under 21

Despite the uniform MLDA of 21, underage youth are able to obtain alcohol from both commercial and social sources (e.g., Dent, Grube, & Biglan, 2005; Paschall et al., 2006, in press; Wagenaar et al., 1996).

Purchase surveys, for example, show that anywhere from 40% to 90% of outlets may sell to underage buyers (e.g., Forster, et al., 1994, 1995; Paschall, et al., in press; Preusser & Williams, 1992; Grube, 1997). In part, these high sales rates result from low and inconsistent levels of enforcement (Wagenaar & Wolfson, 1995). Importantly, however, research shows that even moderate increases in enforcement of sales laws can reduce sales of alcohol to minors by as much as 35% to 40%, (Grube, 1997; Wagenaar, et al., 2000). Such enforcement may also reduce alcohol consumption by youth (Barry, et al., 2004), although the available evidence is suggestive and not definitive.

Teen parties are a primary avenue for underage drinking for high school and college students – and of high consumption of alcohol and binge drinking. The most common setting for drinking among high school seniors is someone else's home. High consumption (five or more drinks) is also associated with drinking in larger groups. Fortunately, research shows that interventions that modify the environments in which adolescents find themselves have an impact on alcohol consumption levels. "Policies aimed at increasing the liability of adults who provide alcohol to minors may help to reduce underage drinking."

On the college level parties are among the most common occasions for socializing and were the settings most associated with heavy drinking -- including house parties, outdoor parties, or fraternity parties. More importantly, results from youth focus groups show few believe serious legal consequences flow from underage drinking.

On April 16, 2007, The San Jose Mercury News published the results of a survey performed in the Silicon Valley in California with both parents and teenagers about

underage drinking. Hundreds of parents in Los Gatos, Monte Sereno and Saratoga, and students at Los Gatos and Saratoga high schools responded as follows:

PARENTS

- 100 percent say it is not OK for teens to drink when parents aren't home.
- 86 percent believe teens take alcohol from homes without parents knowing.
- 46 percent don't know what their liability would be if someone else's child were found drinking in their home.

STUDENTS

- 92 percent of those who drink said it was very easy to get alcohol.
- 88 percent of those who drink said they drink at someone else's home.
- 35 percent said they have attended a party at which students drank.
- 83 percent believe the typical student has attended a party at which students were drinking.

Because social host laws are new, most of the evidence of their likely effect comes from studies that investigate the impact on public health of similar laws on servers and sellers in bars and restaurants (referred to as dram shop liability laws). For example, states with the strongest server liability laws are more likely than other states to see reductions in drunk driving and mortality rates.¹

The first national study of civil social host law found that social host liability laws reduced binge drinking and drinking and driving among drinkers generally. The authors of the study concluded that, "Social host laws represent an expansion of support into a new area of third-party liability, and study results appear to support their effectiveness."²

Enforcement of laws adds to the probability that social host laws will have a positive effect on public health. One example of the impact of vigorous enforcement comes from a related type of law - sales by retailers to minors. Even moderate increases in enforcement of dram shop laws using compliance checks can result in a 25 – 40 percent reduction in sales.³ Similarly, enforcement of laws prohibiting sales to intoxicated persons in bars (using warnings, visits, citations) results in substantial changes in refusals of service and a decline in the percentages of impaired drivers arrested after leaving bars and restaurants. And, intervention can have a continuing effect – tests one year after the stepped up enforcement showed continuing, although diminishing results.⁴

Early indicators of the impact of enforcement of social host liability laws show the necessity of them. Ventura County, California recently received a national award from The Office of Juvenile Justice and Delinquency Prevention in the U.S. Justice

¹ Wagenaar and Holder 1991; Chaloupka, Saffer and Grossman 1993; Sloan, Reilly, and Schenzler 1994 Stout, Sloan, Liang, and Davies 2000.

² Sloan, Stout, Whetten-Goldstein, and Liang (2000). Quote from page 257.

³ Grube (1997) and Wagenaar et al (2000).

⁴ McKnight and Streff (1994).

Department, for its work to reduce the incidence of underage drinking parties. Each of Ventura's 10 cities and its unincorporated area have all passed social host liability ordinances. Ventura is reported to be the only county in the U.S. to have all of its jurisdictions covered by such a law. Most importantly, enforcement of the laws throughout the county has resulted in 48 calls for service in the county from June 25, 2006 until July 2, 2007. Five of the locations visited by police officers had prior problems, and at one location, there were 33 loud party calls to the police. Several of the parties at which police were dispatched had more than 50 people and four had 100 people or more.⁵

D. Alcohol Policy Information System

Underage possession, underage consumption, and underage purchase are status offenses, which means these behaviors are law violations because they are committed by persons under 21.

The policies of false identification for obtaining alcohol, furnishing, and social host liability typically target adults, although persons under 21 may be held liable. The policies regarding minimum age of servers and sellers usually target commercial retailers. Therefore, these policies are not considered status offenses.

The NIAAA website Alcohol Policy Information System (APIS)⁶ is a NIAAA-funded online resource that features compilations and analyses of alcohol-related statutes and regulations, providing users—federal, state and local lawmakers and officials; public health workers; law enforcement personnel; community advocates; researchers; and others—with one-stop access to the latest and most comprehensive information on federal and state level alcohol policy. The principal research tools on the APIS Web site are 36 sets of comparison tables and supporting materials for selected alcohol policies. Nine of the 36 alcohol policies featured on APIS provide policy descriptions, comparison tables, and other detailed information on underage drinking. These nine policies are:

- Underage Possession of Alcohol
- Underage Consumption of Alcohol
- Underage Purchase of Alcohol
- Furnishing Alcohol to Minors
- Minimum Ages for On-Premises Servers and Bartenders
- Minimum Ages for Off-Premises Sellers
- False Identification for Obtaining Alcohol
- Loss of Driving Privileges for Alcohol Violations by Minors
- Hosting Underage Drinking Parties – Criminal Liability

⁵ Wilson, 2007.

⁶ APIS can be found at this URL: <http://alcoholpolicy.niaaa.nih.gov>.

APIS data shows that as of January 1, 2007:

- Underage possession was an offense in all 50 states and D.C.
- Underage consumption was an offense in 32 states and D.C.
- Underage purchase was an offense in 46 states and D.C.
- False Identification for obtaining alcohol was an offense in all 50 states and D.C.
- Social host liability was a public offense⁷ in 23 states

(APIS, 2007).

Social Host Liability

Under social host liability laws, adults who serve alcohol to a minor or intoxicated adult in a non-commercial setting can be sued through civil action for damages or injury caused by that minor or intoxicated adult. Social host liability laws may deter adults from hosting underage parties, purchasing alcohol for or providing alcohol to minors, and over-serving. There is very little research on the effectiveness of social host liability laws and what evidence exists is conflicting. In one study across all 50 states for the years 1984-1995, the presence of social host liability laws was associated with decreases in alcohol-related traffic fatalities among adults, but was unrelated to such deaths among minors (Whetten-Goldstein, et al, 2000). In a second study, however, using self-reported drinking data spanning the 1980s to 1995, the implementation of social host liability laws were associated with decreases in reported heavy drinking and in decreases in drinking and driving by lighter drinkers (Stout, et al., 2000). They had no effect on drinking and driving by heavier drinkers.

⁷ The term “public offense” means an offense against the state as opposed to a private offense for which the law allows a private individual the right to bring a lawsuit against another. Social host liability consists of both public offenses, which are prosecuted on behalf of the state and which involve the imposition of fines collected by the government and/or imprisonment in a county or other local facility, and private offenses, which allow private individuals to sue a host for money damages for harm resulting from the intoxication of a person under 21 after being served or provided a location to drink alcohol on the host’s private property.