

## **Model Guidelines Concerning Compliance Checks for Underage Alcohol Sales**

The model guidelines contained in this WebPages are the result of a cooperative effort of a workgroup comprised of representatives of local law enforcement, the liquor industry, municipal and county governments, and the legal profession, which met from August through December 1997. Chaired by the Colorado Liquor Enforcement Division, the workgroup convened following the defeat of legislation introduced during the 1997 session which attempted to restrict the use of compliance checks as an enforcement tool. The workgroup was charged with the task of developing model guidelines which could be used by alcohol enforcement and licensing agencies.

Workgroup members endeavored to create a fair, effective, and workable set of guidelines that can be used by municipalities and counties regardless of their size. In doing so, the workgroup recognized the sometimes irreconcilable differences between governments and law enforcement agencies, who must respond to varying community standards and expectations, and the liquor industry's desire for consistency and equity in how they are treated from one community to another in response to law violations.

It should be noted that there was essentially unanimous agreement by workgroup participants regarding the value of server training for managers and employees of liquor-licensed establishments. As a result, within the section entitled Suggested Penalties, a recommendation is made to consider voluntary server training as a mitigating factor when considering a sanction for the licensee for a first-time offense in certain situations. Further, due to the strong support for such training, organizations which provide server training within the state will make that information available to the Colorado Municipal Clerks Association, the Colorado Municipal League and Colorado County Clerks Association including dates and locations of various training programs, for distribution to their memberships.

Finally, adoption and use of these guidelines is not meant to preclude or discourage the use of other enforcement methodologies, such as "cops in shops," server training, or surveillance, which also promote and encourage industry compliance with the laws prohibiting alcohol sales to minors.

### **Purpose:**

Compliance checks regarding alcohol sales to underage persons are an established, common, and widely-used method for law enforcement agencies to respond to community concerns regarding the sale of alcohol to minors. They are conducted to determine levels of compliance with state law and result in an increase in voluntary compliance. In order to address both the varying standards in communities and the desire for consistent application of enforcement, these guidelines offer a range of penalties that can be used by law enforcement agencies and liquor licensing authorities.

### **Guidelines:**

I. A compliance check, sometimes referred to as a sting, is a proactive enforcement approach to the problem of liquor sale-to-minor violations. A person under the age of 21 years (minor, underage purchaser) is enlisted to attempt to purchase alcohol beverages from a liquor licensee. A compliance check provides an investigative avenue for the detection and deterrence of liquor sales to underage persons. Such checks may be used:

- A. When a complaint has been logged that a licensee is selling to persons under age 21 years.
- B. On a random basis, to ascertain levels of compliance among licensees and to deter sales to minors generally.

**II. The underage purchaser:**

- A. Should be within the range of 18 and 20 years of age, with age-appropriate appearance and no age enhancements.
- B. May have no criminal history or pending criminal charges, with the exception of non-alcohol related traffic offenses or petty offenses.
- C. Should have a photograph taken as he/she appears on the date of the operation. The photo is to be held as evidence.
- D. Must be willing and available to testify.
- E. Should be advised of and agree to all procedures prior to attempt to purchase.
- F. Should be asked if he/she has purchased or been served alcohol in the target establishment in the past.
- G. May be compensated, but no based on number of successful purchases.

**III. Identification**

A. The underage purchaser may:

- 1. Carry and use his/her own, valid identification.
- 2. Carry no identification, and respond, if asked, with a reasonable excuse such "I lost it," or "I forgot it."

B. It is the responsibility of the Law Enforcement entity involved to assure that the underage purchaser has no other identification on his/her person prior to the operation.

C. Similarly, any money in the possession of the purchaser should be provided by the agency.

**IV. General Procedures for the Underage Purchaser**

A. If identification is used, the underage purchaser should present valid ID upon request to the seller.

B. If identification is used, the underage purchaser should state his or her actual age if asked.

C. If refused purchase, the underage purchaser will make no further attempt to convince the server or seller to provide alcohol.

D. If the licensee attempts to detain the purchaser, she/he will not resist, but will remain on premises until the law enforcement agent responds.

E. No person under the age of twenty-one years is to be allowed to consume alcohol under any circumstances.

F. The underage purchaser is to contact the law enforcement agent immediately upon purchase of alcohol.

#### **V. General Procedures for Law Enforcement**

A. Law enforcement personnel should be in a position to visually monitor or control the underage purchaser during the operation.

B. Whenever the alcohol beverage purchased is in a closed container and the law enforcement officer can read the label which identifies the contents, collection of evidence is not necessary. Any other alcohol beverage should be retrieved and retained as evidence.

C. The minor operative must be the one who attempted to make a purchase.

D. Law enforcement personnel will advise underage purchasers that they should make note of the appearance of the person who serves or sells to them, including whether they were asked for ID.

#### **VI. Notification of the Licensee or the Person who Served/Sold to the Underage Person**

A. The person who sold to/served the underage person should be notified on the same day (either immediately or at the end of the operation to avoid jeopardizing a continued operation). If administrative action is to be taken, the licensee should be notified within 14 days that a Show Cause Order may be forthcoming.

B. When a summons is issued, it should be served within three days.

C. Licensees who fail to sell to underage operatives should be notified of same, preferably in writing within 14 days.

#### **VII. Suggested Penalties**

A. The seller/server should be issued a criminal summons.

B. The licensee may receive administrative sanctions through the licensing authority.

1. First Offense - Written warning to 15 day suspension. Accepting a fine in lieu of up to 14 days of actual suspension is at the discretion of the licensing authority, as is holding a portion of the suspension time in abeyance for a period of time.

As an inducement for licensees to provide training for servers, because server training has proven to be an aid in the reduction of violations, it is recommended that, where there are no aggravating circumstances, a licensee who has provided training to its staff members be issued only a warning on first violation.

2. Second Offense (within one year) - 5 to 30 day suspension. If no fine was paid or suspension served at the time of the first offense, it would be within the discretion of the licensing authority to accept a fine in lieu of actual days of suspension and/or to hold a portion of the suspension time in abeyance for a period of time.

3. Third Offense (within one year) - 20 to 45 day suspension.
4. Fourth Offense (within two years) - 45 day suspension to revocation.

C. Mitigation/Aggravation to be considered regarding severity of penalty imposed may include:

1. Action taken by the licensee to prevent violation, i.e., training of servers. See Section VII. B 1. of this policy.
2. Licensee's past history of success or failure with compliance checks.
3. Corrective action taken by the licensee.
4. Prior violations/prior corrective action and its effectiveness.
5. Willfulness or deliberateness of the violation.
6. Likelihood of recurrence of the violation.
7. Factors which might make the situation unique, such as:
  - a. Prior notification letter to the licensee that a compliance check would be forthcoming.
  - b. The dress or appearance of the underage operative, i.e. the operative was wearing a high school letter jacket.
8. Licensee or manager is the violator or has directed an employee or other individual to violate the law.

#### **VIII. Violation Re-checks**

Though random compliance checks are conducted at varying intervals, it is recommended that licensed establishments who do not sell to minors not be subjected to re-checks at unreasonably short intervals.

Examples of Penalty Variations:

1. Last spring, the town of Ambivalence was rocked when three fatal traffic accidents occurred involving high school students who had consumed alcohol. All three accidents occurred following prom or graduation activities. The source of the alcohol was not determined.

To avoid similar problems this year, the town advised its liquor licensees by mail and newspaper releases, that it would be conducting underage compliance checks. During its compliance checks, four of the town's thirteen licensees were caught selling to minors.

Liquor Store "A" has no prior history of violation and has sent all of its employees to training. The clerk who sold was hired within the previous month and has since been terminated from her employment.

Penalty for Store "A": The local licensing authority would normally have given this licensee only a warning, if not for the special circumstances (the warning letter) and the community concern

about past problems. The licensee receives a three day suspension with the option of paying a fine in lieu of serving the suspension.

Liquor Store "B" had a sale-to-minor violation (not a compliance check) 14 months previously and paid a fine in lieu of actual days of suspension. This store does not train its employees. The clerk who sold is a long-term employee who still works at the store.

Penalty for Store "B": Due to the licensee's past history, lack of staff training and pre-sting notification letter, the local licensing authority imposes a 15 day suspension. If the licensee agrees to train all of its current and future employees, the local authority has agreed to hold 8 days of the 15 day suspension in abeyance. The licensee agrees to the training and serves a 7 day suspension.

Restaurant "C" has no prior history of violation and its staff has not been trained. During the compliance check conducted on prom night, the underage operatives went into the restaurant dressed in tuxedo and prom dress. Their waitress, the licensee's wife, noted their appearance and commented, "I probably shouldn't serve you, but heck, prom's only once a year."

Penalty for Restaurant "C": The local licensing authority, due to the willful nature of the violation, imposes a 15 day license suspension and does not consider holding any time in abeyance or allowing the licensee to exercise its option to pay a fine.

Restaurant "D" like Liquor Store "A" had no prior history of violation and has sent all of its employees to server training. The waiter, who had attended a server training class two weeks before the incident occurred, was terminated from employment after the incident.

Penalty for Restaurant "D": The local licensing authority takes into account the same factors if used in Liquor Store A's situation. A three day suspension with the option of paying a fine is imposed.