

Model Underage Alcohol Consumption Reduction Act

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Model Underage Alcohol Consumption Reduction Act

Policy Statement

Despite the legal drinking age of 21, vast numbers of youths under the age of 21 consume alcohol. Distressingly, the number of them engaging in abusive alcohol consumption patterns remains high: nearly one-third of high school seniors experience a “binge” of five or more drinks in a row within the previous two weeks. For college students under the age of 21, the numbers approach 50 percent. These drinking patterns can lead to harmful and sometimes deadly consequences. For example, approximately 30 percent of teenage drivers killed in 1991 tested positive for alcohol.

Studies indicate that the later the onset of alcohol consumption, the less likely an individual is to develop problems with alcohol abuse. However, the average age at which young people in this country begin drinking is now 13.

Research also indicates that alcohol can be a “gateway” drug, in some instances leading to tobacco or illicit drug use. By reducing the exposure of children and teens to alcoholic beverages, the Commission intends to reduce the likelihood that those youths will progress through that pattern of increasingly self-destructive behavior.

The Office of the Inspector General of the U.S. Department of Health and Human Services has identified numerous loopholes in state laws pertaining to underage alcohol consumption. These loopholes contribute to the easy access to alcohol and lax attitudes that lead to underage alcohol consumption. While all states have established a minimum legal drinking age of 21, few prohibit all aspects of the purchase, possession, or consumption of alcohol by those under the age of 21. For example, twenty-three states do not prohibit minors from attempting to purchase alcohol. Five states do not have laws to prosecute those who succeed in purchasing alcohol. Sixteen states do not prohibit those under 21 from misrepresenting their age to obtain alcohol. Eighteen states have no laws against the use of fraudulent identification.

This model legislation, developed with the assistance of the National Highway Traffic Safety Administration, establishes a comprehensive prohibition of the purchase, possession, and consumption of alcohol by underage people. It also addresses other important means through which underage drinkers obtain alcohol: older people who provide alcohol to underage drinkers, establishments that knowingly serve underage drinkers, and fraudulent identification use by underage drinkers. The Commission believes that all of these provisions should be included in any comprehensive statute designed to curb underage alcohol abuse.

State laws alone will not prevent or curb underage alcohol abuse. Prevention also must take the form of educational programs, school policy approaches, mass media campaigns, communitywide strategies, alternative programs, and workplace programs. Attitudes and influences must change as well, and those changes can happen. See, for example, the Model State Sensible Advertising and Family Education Act in this volume, addressing alcohol advertising.

Laws express community values and set community standards in strong, unambiguous terms. Laws — an important facet of any comprehensive preventive approach — help to shift attitudes and direct social influences towards socially accepted behaviors. The intent of this model legislation is not only to address a serious problem in the most effective legal manner available, but also to accentuate those community values of health, safety, and the welfare of young people, both now and in the future.

Highlights of the Model Underage Alcohol Consumption Reduction Act

ASSUMPTIONS AND REMEDIAL GOALS

- Recognizes the high prevalence of underage drinking.
- Recognizes the harmful consequences of such underage drinking, including above average rates of traffic fatalities, hangovers, injuries, and legal difficulties as well as the potential for future heavy alcohol and other drug use.
- Recognizes that numerous loopholes exist in state legislation pertaining to underage purchase, possession, and consumption of alcohol and the use of fraudulent identification to obtain alcohol.
- Prohibits the use of fraudulent identification to obtain, possess, or consume alcoholic beverages and establishes penalties to punish the use of such identification.
- Prohibits the sale or furnishing of alcohol to underage persons and establishes penalties to punish such sale or furnishing.
- Prohibits the sale or furnishing of alcoholic beverages to underage persons by a licensed individual or establishment and establishes penalties, including the revocation of the liquor license, for such illegal sale or furnishing.

SPECIFIC RECOMMENDATIONS

- Prohibits the:
 - Purchase, attempt to purchase, or solicitation of someone to purchase any alcoholic beverage;
 - Consumption of any alcoholic beverage; and
 - Possession of any alcoholic beverage with the intent to consume it.
- Authorizes law enforcement officials to seize and/or destroy alcoholic beverages that are in the possession of underage persons.
- Provides penalties, including fines, community service, and the suspension of driver's license, for those who violate underage drinking provisions of this [Act].
- Provides three options for assessing, referring, and treating underage drinkers to appropriate treatment or education services.

Model Underage Alcohol Consumption Reduction Act

Section 1. Short Title.

The provisions of this [Act] shall be known and may be cited as the “Model Underage Alcohol Consumption Reduction Act.”

Section 2. Legislative Findings.

(a) Despite a minimum legal drinking age of 21, recent alcohol and other drug use prevalence surveys such as the annual National High School Senior Survey indicate that nearly one-third of all high school seniors experienced a “binge” of five or more drinks in a row within the previous two weeks.

(b) The average age at which young people begin drinking is 13. By age 13, approximately 30 percent of boys and 22 percent of girls classify themselves as drinkers. According to a 1988 National High School Senior Survey, 17 percent of high school seniors reported having been drunk at least once by eighth grade, 37 percent by ninth grade, 54 percent by tenth grade, and 71 percent by twelfth grade. Studies demonstrate that the use of alcohol by individuals before the age of 15 appears to be one of the predictors of later heavy alcohol and other drug use by the individuals.

(c) Parental approval of drinking has been found in a number of studies to be a significant predictor of alcohol consumption by many adolescents, according to an Office of Substance Abuse Prevention Monograph “A Promising Future: Alcohol and Other Drug Problem Prevention Services Improvement.”

(d) A Southern Illinois University/College of William and Mary survey of 58,000 college students from 78 different colleges and universities found that students under the age of 21 drink more alcohol and suffer more hangovers, injuries, and legal difficulties than those over 21.

(e) Forty seven percent of traffic fatalities of people age 15-20 were alcohol related in 1991, according to the National Highway Traffic Safety Administration.

(f) A 1991 Office of the Inspector General report indicates that eight million junior and senior high school students drink alcohol weekly. The same report notes that 6.9 million junior and senior high school students purchase their own alcohol from stores.

(g) The Office of Inspector General has found that numerous loopholes exist in state legislation pertaining to underage purchase, possession, and consumption of alcohol and the use of fraudulent identification.

(h) The National Transportation Safety Board has called upon states to eliminate loopholes in state laws by banning the purchase, attempt to purchase, possession, or consumption of any alcoholic beverage by those under the age of 21.

(i) The Join Together Public Policy Panel on Underage Access to Alcohol recommends the following actions to reduce underage drinking, among other recommendations:

- (1) States should lower the Blood Alcohol Concentration (BAC) levels for youths;
- (2) All retail outlets and private individuals should be held liable for negligently providing alcohol to a minor;
- (3) Prominent warning labels about the risks of alcohol consumption should appear on all alcohol advertising; and
- (4) Local government officials and community coalitions around the country should systematically assess youth access to alcohol in their communities and examine ways to reduce this access.

COMMENT

By identifying some of the problems of underage drinking to be addressed by this legislation, this declaration of findings will aid the courts and state agencies in interpreting and implementing the specific provisions of the [Act]. This legislation holds underage persons as well as licensed and unlicensed adults and establishments accountable for curbing underage alcohol consumption.

Section 3. Purpose.

The provisions of this [Act] are intended to establish comprehensive state provisions prohibiting the purchase, possession, and consumption of alcohol by underage persons

Section 4. Definitions.

As used in this [Act]:

- (a) "Furnish" means to give, provide, or supply.
- (b) "Licensee" means any individual or establishment, or their employees or their agents, licensed by the state to sell or distribute alcoholic beverages.
- (c) "[Single state authority on alcohol and other drugs]" means the state agency designated by the governor to plan, manage, monitor, and evaluate alcohol and other drug treatment services in the state.
- (d) "Underage" means less than 21 years of age.

COMMENT

The Commission intends the application of the term "furnish" to be a strict liability offense and recommends that state legislatures express a similar intent if they adopt the term as well. "Furnish" has been used in many state laws concerning underage alcohol consumption. A significant case history exists in which the term "furnish" has been interpreted as a strict liability offense with respect to providing alcohol to underage drinkers.

Section 5. Unlawful Purchase, Consumption, or Possession of Alcohol.

An underage person shall not:

- (a) Purchase, attempt to purchase, or solicit someone to purchase any alcoholic beverage;
- (b) Consume any alcoholic beverage;
- (c) Possess any alcoholic beverage with the intent to consume it. Possession creates a rebuttable presumption of intent to consume.

COMMENT

The prohibitions set forth in this section give direct effect to the primary purpose of this [Act]. Prohibition of the purchase (including attempt to purchase), consumption, and possession of alcoholic beverages by underage persons forms the centerpiece of any effective,

comprehensive package of state underage drinking laws.

Several exceptions may be considered by state legislatures. In subsection (b), a legislature may wish to consider exempting underage consumption of alcoholic beverages during legitimate religious services or activities while under direct adult supervision. In subsection (c), a legislature may wish to allow possession of alcoholic beverages in instances of employment as a bartender, barback, wait staff, busperson, dining establishment host, or sales clerk or stockperson in a liquor store, where allowable by laws regulating those professions. These exemptions should be allowed only when there is direct adult supervision.

Any efforts to curb underage drinking need to begin in the home setting. With that in mind, the Commission recommends against any exception for possession or consumption by underage persons in a private home, with or without adult supervision (as found in a number of state alcohol codes). The Commission feels that such an exception sends mixed and confusing signals to parents and youths alike that underage drinking is tolerable under certain circumstances.

Section 6. Law Enforcement Authorization to Seize Beverages.

- (a) A law enforcement officer shall seize any opened or unopened alcoholic beverage that is in the possession of an underage person, provided that such seizure is not inconsistent with the constitution of this state and the United States.
- (b) Where a law enforcement officer has seized alcoholic beverages pursuant to this section, such alcoholic beverages shall be destroyed upon determination that the beverages no longer have evidentiary value.

COMMENT

This section should be construed to allow law enforcement officers to seize and destroy alcoholic beverages in the possession of underage persons in accordance with established procedures of their agencies for handling evidence. The conduct of such law enforcement officials in seizing and destroying such alcoholic beverages, of course, must also comply with state and federal constitutional law.

Section 7. Penalties.

A person who violates Section 5 is guilty of a misdemeanor and, upon conviction or adjudication of guilt, shall be punished by:

(a) A minimum fine of not less than [\$250], no part of which shall be suspended, and not less than [24 hours or more than 32 hours] of community service during hours when the person is not employed and is not attending school or a combination of fine and community service as determined by the court.

(b) Suspension of driver's license.

(1) In addition to the penalty set forth in subsection (a), the court shall order the suspension of the convicted or adjudged individual's driver's license for a period of [90 days] for the first offense, [six months] for the second offense, and [one year] for any offense thereafter. The driver's license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and a certificate of conviction or adjudication of guilt to the state [department of motor vehicles].

(2) If the individual does not have a driver's license or the driver's license of the individual is suspended or revoked at the time the individual is so convicted or adjudged guilty, there shall be a delay in the individual's eligibility to receive a license or have a revoked license reinstated, equal to the level of punishment established in subsection (b)(1).

(3) If an individual is determined by the assessment process established in (c) to have an alcohol and/or other drug problem and is ordered to submit to a treatment program, the individual shall not have his or her license reinstated until after successfully completing the treatment requirement, even if the suspension periods in (1) and (2) have been fulfilled. Should a treatment program, as required by subsection (c), not be immediately available, the offender, after completion of the period of suspension, may have his or her license reinstated if all of the following conditions are met:

(A) The offender is placed on a certified waiting list until a position for the recommended course of treatment becomes available;

(B) The offender remains alcohol- and drug-free and submits to regular alcohol and other drug testing as ordered by the court;

(C) The offender attends, with verification, no fewer than [five] twelve-step recovery meetings per week, until the course of treatment begins.

If the offender for any reason fails to comply with the conditions of this subsection, the license shall not be reinstated unless the court finds in writing that there are extraordinary and compelling reasons to reinstate the license pending the person's participation in the recommended course of treatment by a date certain to be fixed by the court.

[(c) {OPTION 1} In addition to the penalties established in subsections (a) and (b), the violator shall be subject to the full application of the [Model Comprehensive Criminal Justice Treatment Act], found in Volume IV, Treatment].

[(c) {OPTION 2} In addition to the penalties established in subsections (a) and (b), the offender shall submit to an assessment of alcohol and other drug problems.

(1) The assessment shall be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority on alcohol and other drugs], or an inpatient or outpatient treatment program licensed by the [single state authority on alcohol and other drugs].

(2) The court shall order appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.

(3) The [single state authority on alcohol and other drugs] or its designee shall report to the court on the progress of any offender ordered to participate in a treatment program.

(4) Failure to complete the court-ordered treatment shall result in doubling of the fines, incarceration, community service, and duration of loss of licensure otherwise provided in this [Act], or any combination thereof, as determined by the court.]

[(c) {OPTION 3} A person who commits a second or subsequent violation of these sections shall be subject to the penalties prescribed in subsection (a) and, in addition, shall submit to an assessment of alcohol and other drug problems.

(1) The assessment shall be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority on alcohol

and other drugs], or an inpatient or outpatient treatment program licensed by the [single state authority on alcohol and other drugs].

(2) The court shall order appropriate supervised treatment or education services in accordance with the clinical alcohol and other drug abuse assessment.

(3) The [single state authority on alcohol and other drugs] or its designee shall report to the court on the progress of any offender ordered to participate in a treatment program.

(4) Failure to complete the court-ordered treatment shall result in doubling of the fines, incarceration, community service, and duration of loss of licensure otherwise provided in this [Act], or any combination thereof, as determined by the court.]

(d) All convictions in state, federal, or foreign jurisdictions for those misdemeanors substantially equivalent to those defined in Section 5 apply in this state and are subject to the penalties defined in this section

COMMENT

This section establishes penalties for those persons who violate Section 5. The penalties established in subsections (a) and (b), which have been recommended to the Commission by the National Highway Traffic Safety Administration, should be taken as minimum recommended levels.

Subsection (c), Option 1 holds offenders of this [Act] to the full application of the Commission's [Model Criminal Justice Treatment Act], found in Volume IV, Treatment, of the Commission's final report. The [Model Criminal Justice Treatment Act] establishes a procedure through which all those who commit felonies and selected misdemeanors, including all DUIs, are subject to alcohol and other drug testing, assessment of any alcohol and other drug problems by the [single state authority on alcohol and other drugs] or its licensed designee, and referral to an appropriate treatment program. The testing and assessment are made a condition of release pre-trial or probation or parole. The testing and monitoring will be handled by a defendant management agency while the treatment programs will be handled by the single state authority on alcohol and other drugs, a designee of the [single state authority on alcohol and other drugs], or a treatment program licensed by the [single state authority].

Because it is anticipated that full implementation of the [Model Criminal Justice Treatment Act] will require several years, the Commission offers Options 2 and 3 to facilitate the speedy adoption of this underage alcohol consumption legislation.

In subsection (c), Option 2, the Commission recommends that an initial assessment of alcohol and other drug problems be conducted after first violation of these provisions. This assessment would be conducted by the [single state authority on alcohol and other drugs], a designee of the [single state authority], or a treatment program licensed by the [single state authority] and would provide a determination of whether the violator has any alcohol or other drug abuse problem. Early detection of any such problem improves the probability of reducing detrimental alcohol- and other drug-related incidences later in life.

Subsection (c), Option 3 would mandate an assessment of alcohol and other drug problems after a second or subsequent alcohol offense. (The Commission recommends Option 2 over Option 3.)

Subsection (d) holds that penalties will apply to a resident of the state, even if the resident committed the misdemeanor in another state, federal, or foreign jurisdiction.

Section 8. Use of Fraudulent Identification.

It is unlawful for any person:

(a) To use a false or fictitious name in any application for a driver's license or personal identification card or to knowingly make a false statement or to knowingly conceal a material fact or otherwise commit a fraud in any such application;

(b) To display or cause or permit to be displayed or have in such person's possession any canceled, revoked, suspended, fictitious or fraudulently altered driver's license or personal identification card for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages;

(c) To lend a personal driver's license or personal identification card to any other person for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages;

(d) To display or represent as one's own any driver's license or personal identification card not issued to such person for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages;

(e) To fail or refuse to surrender to the state [department of motor vehicles] upon lawful demand any driver's license that has been suspended, revoked or canceled for the illegal purchase, provision, possession, or consumption of alcoholic beverages;

(f) To permit any unlawful use of a driver's license or personal identification card issued to such person for the purposes of purchasing, furnishing, possessing, or consuming alcoholic beverages.

COMMENT

This section addresses one of the primary means of access to alcohol by underage persons: the use of fraudulent identification.

Section 9. Penalties for Fraudulent Identification.

A person who violates Section 8 is guilty of a misdemeanor and, upon conviction or adjudication of guilt, shall be punished by:

(a) A minimum fine of not less than [\$250], no part of which shall be suspended, and not less than [24 hours or more than 32 hours] of community service during hours when the person is not employed and is not attending school.

(b) Suspension of driver's license.

(1) In addition to the penalty set forth in subsection (a), the court shall order the suspension of the convicted or adjudged individual's driver's license for a period of [90 days] for the first offense, [six months] for the second offense, and [one year] for any offense thereafter. The driver's license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and a certificate of conviction or adjudication of guilt to the state [department of motor vehicles].

(2) If the individual does not have a driver's license or the driver's license is suspended or revoked at the time the individual is so convicted, there shall be a delay in the individual's eligibility to receive a license or have a revoked license reinstated, equivalent to the length of punishment established in (b)(1).

(c) All convictions in state, federal, or foreign jurisdictions for those misdemeanors substantially equivalent to those defined in Section 8 apply in this state and are subject to the penalties defined in this section.

COMMENT

This section establishes penalties for violations of Section 8's fraudulent identification provisions. (If the [Model Criminal Justice Treatment Act] is adopted, an alcohol and other drug assessment may be required, in addition to the penalties outlined in this section. If the assessment determines that the offender has an alcohol or other drug problem, then treatment provisions of that [Act] will apply.)

As with Section 7, all penalties will be applied to a resident of the state, even if the resident committed the misdemeanor in another state, federal, or foreign jurisdiction.

Section 10. Selling or Furnishing Alcoholic Beverages to Underage Persons.

(a) Any person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any underage person is guilty of a misdemeanor.

(b) Any person who violates subsection (a) shall be punished by a minimum fine of not less than [\$250], no part of which shall be suspended, and not less than [24 hours or more than 32 hours] of community service during hours when the person is not employed and is not attending school.

(c) All convictions in state, federal, or foreign jurisdictions for those misdemeanors that are substantially equivalent to those defined in subsection (a) apply in this state and are subject to the penalties defined in (b).

COMMENT

This section addresses another primary means of access to alcohol by underage persons: the intercession of other friends, family members, and adults.

Section 11. Selling or Furnishing Alcoholic Beverages to Underage Persons by a Licensed Individual or Establishment.

(a) Any individual or establishment that sells any alcoholic beverage to a person whom the individual or establishment knew or should have known was underage, is guilty of a misdemeanor.

(b) Any individual or establishment that permits a person whom the individual or establishment knew or should have known was underage to consume any alcoholic beverage in the premises is guilty of a misdemeanor.

(c) All individuals or establishments serving alcoholic beverages must make a good faith effort to determine the age of persons seeking to purchase or consume alcoholic beverages in the premises by, at a minimum, requesting and checking the individual's valid identification. Any individual or establishment that fails to make such a good faith effort to determine the age of a person who later proves to be underage shall be deemed in violation of this section.

(d) Any individual or establishment that violates subsections (a) and (b) shall be punished by a fine of not less than [\$1,000 and no more than \$10,000] for a first offense. Any subsequent violations of (a) and (b) by a licensee shall result in the revocation of the liquor license by the state [alcohol beverage control board].

COMMENT

Underage persons access alcohol through liquor stores, bars, eating and drinking establishments, and clubs. While most of the provisions of this [Act] seek to hold underage drinkers accountable for their own actions, this section seeks to hold individuals and establishments accountable for facilitating underage drinking. By specifying "individuals and establishments," this section includes not only individuals and establishments with liquor licenses, but speakeasies as well.

Under subsection (a), individuals and establishments may not sell alcoholic beverages to any person they

know or should know is underage. Under subsection (b), individuals or establishments may not allow persons whom they know or should know is underage to consume alcoholic beverages in the premises.

The "know or should know" standard is established in subsection (c), which states that a good faith effort to determine the person's age by checking valid identification must be made. By implication, subsection (c) allows that a licensee shall have an affirmative defense if there was a good faith effort to verify the individual's age.

Section 12. Severability.

If any provision of this [Act] or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application of the [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

Section 13. Effective Date.

This [Act] shall be effective on [reference to normal state method of determination of the effective date] [reference to specific date].