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Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention

REDUCING ALCOHOL SALES TO UNDERAGE PURCHASERS

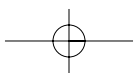
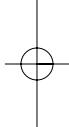
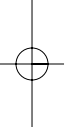
**A PRACTICAL GUIDE TO
COMPLIANCE INVESTIGATIONS**

Prepared by

Pacific Institute

FOR RESEARCH AND EVALUATION

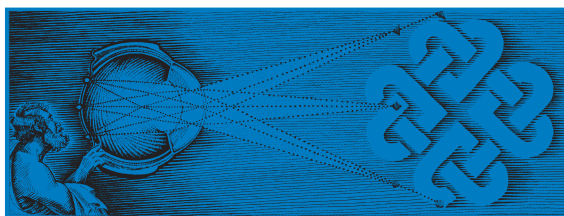
In support of the
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A PRACTICAL GUIDE TO
COMPLIANCE INVESTIGATIONS

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How To Use This Document

This guide provides guidelines and operational information on reducing sales of alcohol to underage purchasers through compliance investigations of alcohol retailers. It presents the rationales for carrying out these investigations and emphasizes the importance of reducing youth access to alcohol.

State and local enforcement agencies, policymakers, and concerned citizens can use this guide to

- gain an understanding of the issues related to underage drinking and the retail availability of alcohol to underage purchasers
- motivate policymakers, communities, and law enforcement to place greater emphasis on compliance investigations and prevention of underage drinking
- provide step-by-step guidelines for carrying out compliance investigations
- identify barriers to compliance investigations and approaches to overcoming these barriers
- utilize compliance investigations efficiently and effectively to deter sales to minors and demonstrate community norms against underage drinking.

This document is designed to provide guidance for carrying out retail compliance investigations at off-premises locations such as liquor and convenience stores. Many of the same operational issues and strategies apply to compliance investigations at on-sales locations such as bars and taverns. However, some adaptations must be made to carry out investigations of this type of outlet.

Underage Drinking: A Serious Problem and a Community Priority

Alcohol is the drug of choice used by young people (Johnston, O'Malley, and Bachman, 1998). By the 12th grade, more than 80 percent of adolescents have experimented with alcohol; more than 50 percent reported drinking within the previous month; and more than 30 percent report consuming five or more drinks in a row in the past two weeks (Johnston, O'Malley, & Bachman, 1998). In 1998, more than 7,700 drivers under age 21 were involved in fatal crashes while impaired by alcohol. (NHTSA, 1999).

There are tremendous costs associated with underage drinking in terms of both economic losses and personal tragedies. Youth alcohol use costs the nation over \$58 billion annually as a result of traffic crashes, violent crime, burns, drowning, suicide attempts, alcohol poisoning, and alcohol abuse treatment costs. This equates to \$266 per year for every man, woman, and child in the United States (Pacific Institute, 1999).

Alcohol is one of the most common contributors to injury, death, and criminal behavior among youth (U.S. Dept. of Health and Human Services, 1992). Fortunately, it is an issue that we know how to address. There are a number of effective strategies for reducing underage alcohol use. A vigorous campaign of compliance investigations on retail outlets is one key strategy.

Law enforcement has tried many approaches to dealing with youth alcohol access issues over the years. One method used by many agencies has been surveillance. With this method, many officer hours have been spent watching retail stores, waiting for violations to occur. This has not been the most effective use of scarce resources. The advent of retailer alcohol compliance investigations,

along with supporting laws and ordinances, gave law enforcement a much more effective tool to encourage retail compliance and address those retailers who were violating this law.

No single approach to restricting underage access to alcohol will eliminate the problem. Communities must make a commitment to implement comprehensive approaches to preventing retail access and access through social sources. Other documents in this series deal with other enforcement strategies. Compliance investigations of retail outlets, as discussed here, are key to any enforcement approach and can be highly effective in reducing commercial access to alcohol by people under 21.

Why Conduct Compliance Investigations?

Reducing the Commercial Availability of Alcohol to Minors

Young people obtain beverage alcohol from a wide variety of sources. Reducing the source of supply through retail compliance investigations is one of the most effective strategies available to combat underage drinking. While it is clear that enforcement alone will not eliminate underage drinking, reducing the source of supply will make access to alcohol more difficult and is likely to reduce underage drinking.

Alcohol retailers are the first line of defense in stopping the sale of alcohol to young people. Law enforcement should partner with retailers in working to solve problems associated with underage drinking through a community-oriented policing approach. Working with alcohol retailers gives the agency an opportunity to assess weaknesses in the retailer's operation so that corrections can be made without penalty.

Preventing Problems Before They Occur

There are many ways in which law enforcement agencies can work with alcohol retailers to prevent sales of alcohol to underage persons. Law enforcement agencies may conduct training sessions to remind retailers and their employees about their legal and social responsibilities involved in the sale of alcohol as well as providing updates on issues such as recognizing improper identification or third-party purchase attempts.¹ Agencies might also send retailers periodic letters and notices designed to maintain high awareness of the issue.

Officers will often engage in a more informal training practice by stopping and talking to store employees during their patrol duties about issues such as sale to underage youth and robbery prevention practices. One well-received practice to promote compliance is for officers to present retail clerks with encouragement cards, thanking them for their efforts in preventing the improper sale of alcohol.

Promoting Voluntary Compliance

While these law enforcement efforts are important, police agencies have recognized that they simply do not have the resources to look over each retailer's shoulder. Therefore, the goal of retail compliance investigation programs is voluntary compliance by the alcohol retailers.

Retail compliance investigations have proven to be an effective approach to achieving voluntary compliance. They are one of the most cost-effective activities law enforcement can utilize to assess the availability of alcohol in a community, change the behavior of retailers, and send a message to young people that underage drinking is not acceptable and will not be tolerated.

How many retailers sell alcoholic beverages to persons under 21 in your community? Do 25 percent? 50 percent? Or more? How many lives are negatively impacted by those actions? Law enforcement

¹Guides will soon be available from the Enforcing Underage Drinking Laws Education Training Center on reducing third-party sales and dealing with false identification. Call (toll-free) 877-335-1287.

should consider that they are faced with the “pay me now or pay me later” paradox. An investment of time and resources directed at reducing the sale of alcohol to young people today will pay off in reduced economic and social costs later.

Other Benefits

While voluntary retailer compliance is the primary goal of the retail compliance investigations, many enforcement agencies realize other significant benefits from conducting the investigations:

- Media exposure from retail compliance investigations allows the agency to change or reinforce community norms stressing that underage drinking and the sale of alcohol to underage persons are not acceptable behaviors.
- Retail compliance investigations work as a part of a larger comprehensive strategy in preventing alcohol-related tragedies.
- Investigations allow the agency to measure and monitor the level of underage alcohol sales in the community. This raises community awareness among parents and community leaders, especially when coupled with media advocacy.
- Compliance investigations can be used to measure the effectiveness of this enforcement program and other enforcement strategies.

Over time, compliance investigations will actually reduce the amount of resources law enforcement must invest in the problems associated with underage alcohol use

The Use of Underage Volunteers in Compliance Checks

Underage volunteers are the backbone of a successful retailer compliance investigation program. Selection and use of the volunteers should present a reasonable test of the retailer’s practices and incli-

nation to sell, yet be above suspicion of trickery or entrapment. A well-documented and structured underage volunteer selection and training program is key to a successful enforcement program.

Recruiting Underage Volunteers

Identifying and recruiting volunteers may be stumbling blocks for some agencies. The key to successfully recruiting volunteers lies in presenting information about the program on the widest scale.

Agencies should consider

- presenting information to community groups and churches about the program
- looking to family members and friends of officers and their families
- notifying schools and colleges about the program as a way for students to complete community service hours required for graduation
- utilizing other department employees who are under 21, such as dispatchers, clerks, etc.
- recruiting in criminal justice programs in local colleges and high schools
- placing advertisements in college and community newspapers
- requesting assistance from groups such as MADD, SADD, and community coalitions.

Some enforcement agencies that also carry out compliance investigations for tobacco sales may want to consider using volunteers from these enforcement campaigns. As young people become too old to carry out the tobacco investigations, they are the right age to carry out alcohol investigations. These young people are already trained, experienced, and have demonstrated their willingness to work with law enforcement.

In Stratford, Connecticut...

A series of undercover enforcement operations has reduced illegal sales to minors from over 70 percent six months ago to less than ten percent last month. The following editorial in the Connecticut Post shows the kind of public recognition and support that enforcement can bring.

Connecticut Post
November 29, 1999

EDITORIALS

Police Stings Boost Liquor Law Compliance

It's reassuring to know that Stratford police have seen marked improvement in town liquor sellers' compliance with a state law forbidding the sale of alcohol to underage persons.

Police on Tuesday conducted a pre-Thanksgiving sting sending an underage "agent" to liquor stores to try to purchase alcoholic beverages. The "plant" was told to be truthful about being under 21 if any store personnel asked.

Of the 11 stores tested, all but one passed with flying colors. This was the fifth such sweep to have been conducted in town this year. Readers might find it revealing to contrast these results with those of an earlier operation in May, when 12 or 17 stores sold liquor to an underage buyer with no questions asked.

Indeed, the number of violations has fallen with each successive sting, showing consistent improvement. (First-time offenders face a three-day license suspension and a \$750 fine.)

Evidently, the repeated tests have heightened awareness of this important issue where it counts most: among liquor vendors. Package store owners surely know by now that the law will be vigorously and constantly enforced. There's no such thing as letting their guards down.

That comes as good news any time, but particularly during this season of busy schedules and crowded highways. The last thing motorists need is an encounter with teens drinking in their cars—for that's where many underage drinkers consume liquor.

The Stratford Spirit Shop, which sold alcohol to an underage buyer in this test and in a previous sweep, has correctly been referred to the state Liquor Control Commission.

We urge that agency to back up local police by imposing the strictest penalties at its disposal.



Selecting Underage Volunteers

The appearance and demeanor of the underage volunteer can influence the sales rate. Females may be able to buy more often than males in certain communities. More attractive young people may be able to buy more often without having their IDs checked. Making sure that the underage volunteer is the same race as the sellers may also be a factor in some communities. The key to a successful retail compliance investigation program is to select volunteers that reflect your community while taking into consideration factors that may influence sales rates.

There are several approaches that can be taken to overcome any bias in the use of volunteers. The use of multiple volunteers of different genders and racial backgrounds tends to equalize these factors. Training to ensure that the volunteers follow a consistent protocol will also help reduce any bias. Another effective practice is to randomly assign volunteers of different genders or racial backgrounds to the investigations. Finally, the use of multiple volunteers for each location can neutralize potential bias.

The following criteria should be considered when selecting underage volunteers:

- Select volunteers who are not yet 20. By selecting volunteers under 20, the retailer cannot claim that the test was unfair because the volunteer was close to legal age. In deciding the appropriate age of the volunteers, it may be important to check the language in state laws or local ordinances dictating the duty, if any, a clerk has to ask for identification.
- Use age testing to validate the appearance of the volunteer to ensure they appear under 21 years of age to a reasonable person. This can be accomplished by asking several employees (preferable non-sworn) in your agency or an age panel made up of people who work with young people such as high school teachers. Age testing can be done in person or through a photo line-up.
- If the volunteer is going to use a vehicle during the operation, check the driving record and insurance.

- Select both male and female volunteers and have an appropriate racial mix to reflect the community being checked.
- Underage volunteers should not be used in the community in which they live. Selection distance will depend on the area in which compliance investigations are being conducted. Within cities, for example, working 10 or 15 blocks away from where they live may insure that they are not visiting stores where they might be known. In more rural areas, it may be necessary to recruit volunteers from neighboring cities, towns, or even counties.

Legal Considerations

An important consideration in the use of underage volunteers for the purchase of alcoholic beverages is legal protection or immunity for their actions. Law enforcement agencies conducting retail compliance investigations in jurisdictions where there is statutory protection against arrest for underage persons working at the direction of law enforcement should have no difficulty with this issue.

Looking Into the Use of Underage Volunteers in Compliance Checks

The California Department of Alcoholic Beverage Control operates an Alcohol Decoy Program to reduce the availability of alcohol to youth under the age of 21 at off-sale licensed premises. This program uses underage youth, trained by the Department, as decoys in their compliance checks of retailers. However prior to 1994, youth would have been prohibited from assisting the Department in this way. It took a California Supreme Court ruling in 1994 to allow officers to use underage persons in operations to enforce alcoholic beverage laws (*Proviso Corporation v. Alcoholic Beverage Control Appeals Board*, 7th Cal.4th 561).

The use of underage volunteers is not a given in all states and jurisdictions. Laws, ordinances, and/or court decisions can determine whether or not youth decoys are permitted to participate in police operations. Before beginning a compliance check program, talk with the prosecutor's office in your area about existing statutes and precedents.

In jurisdictions where there is no statutory immunity, it will be necessary to work with legal authorities to determine how to protect the volunteers for their actions. A common approach is to afford immunity for the underage volunteers under the same legal theory as used for informants working at the direction of law enforcement officers.

It must be made clear to the underage volunteer, however, that the immunity is specifically directed to their purchase or attempted purchase of alcoholic beverages and does not grant them immunity for any other acts. This understanding is included in the sample agreement of understanding contained in appendix B.

Sometimes there is no way to grant immunity for the underage volunteer for possession or attempted purchase of alcoholic beverages. However, it may still be possible to conduct compliance investigations where the retailer in violation can be charged without subjecting the underage volunteer to any charge. The district attorney may consider a sale to have been completed once the money has been tendered and the cash register opened. In that case, the volunteer should back away from the alcoholic beverage and, rather than completing the sale, allow the officer to intercede.

Appearance

Appearance of the volunteer is a major consideration in defending the agency's retail compliance investigations against charges of trickery or entrapment. It is recommended that male volunteers have no facial hair (beards, mustaches) and that female volunteers not intentionally look older through the use of heavy makeup or revealing attire. Volunteers should dress in a manner consistent with peers in their age group.

Training the Volunteers

Underage volunteers must be properly trained to ensure the success and fairness of the retail compliance investigations. This training establishes a standard protocol resulting in consistent investigations. The elements of the training program should include

- Coaching the volunteers how to make alcoholic beverage purchases, including how to act, what to say, and how to respond to a variety of questions. The volunteers should be given the opportunity to practice this protocol so that they feel comfortable conducting the investigations. The volunteers should be told never to entice the clerk to sell through word or action. The protocol should

include instruction on what type of alcohol to attempt to purchase, what brand name and size to request, and should be consistent from store to store so that the buyer is decisive in his actions.

- Instructing the underage volunteers to answer truthfully if asked their age or asked to produce ID.
- Advising them not to attempt to buy alcohol if there is someone in the store they know.
- Giving the volunteers the authority to decline to go into a store or to leave if they feel uncomfortable with its layout or for any other reason.

Documenting Volunteers

Each underage volunteer selected for the program should be reliable and well-documented by the agency. A file should be established on each volunteer containing the following:

- **A personal history form** should be used to capture information needed by the agency in supporting the actions of the volunteer. It can also be used as an emergency contract form if necessary. A copy of a sample form is contained in appendix A.
- **Photographs of the volunteer** should be made each time the volunteer is used to provide a complete record of his or her appearance. If it is not practical to take a photograph each time the volunteer is used, a photograph should be made at least monthly during the time the volunteer is being used.
- **Driving and criminal checks.**
- **Injury waivers**, if applicable.
- **Parental permission form**, if the volunteer is under 18.
- **Agreement of understanding**, which sets forth the terms of the relationship between the volunteer and the agency. It describes the tasks to be performed and the limits on the volunteer's authority and immunity. This document is intended to protect

both the agency and the volunteer. A copy of a sample memo of understanding is attached as appendix B.

- **Copy of the volunteer’s driver’s license**, state-issued ID card, or birth certificate.
- **A list of all compliance checks performed by the volunteer** to include dates of the compliance check, locations checked, and whether a “buy” was made or refused.

It is recommended that a volunteer not be used if he or she has a consistently high buy rate. The level at which a volunteer is considered too successful will depend on the retail compliance rate in that community. It is important to ensure that a volunteer’s appearance or demeanor is not consistently causing the retail employees to believe that a volunteer is over 21. This file will help the agency determine if this is the case.

Compensation

Compensation will vary depending on legal considerations and on the reason for the volunteer’s involvement. If this activity is being completed for volunteer or community service hours, a small reimbursement for personal expenses incurred by the volunteer such as meals or vehicle costs may be appropriate. Department employees should probably be compensated as part of their regular duties or as work completed on overtime.

Other persons could be paid if recruitment of volunteers is difficult. This may establish the need to place these persons on the agency’s payroll. The most important consideration in determining what to pay the volunteer is that payment is not tied in any way to the proportion of compliance checks that result in successful buys.

Relationship to Officers

Volunteers related to an officer may be recruited in the same way as those not related to an officer. It is important, however, that the officers to whom they are related not be the investigating officer with

whom they work. It is acceptable for this officer to be the second officer as part of the investigating team.

Insurance

The agency needs to consider the level of liability they incur through the use of volunteers. This would include, but is not limited to, personal injury and civil liability. In some cases, it may also include workman's compensation responsibility.

Planning Compliance Investigations

Compliance investigations are a cost-effective way to control youth access to alcohol from retail outlets. The operations are simple to conduct if properly planned.

The manner in which retail compliance investigations are conducted is based on the agency's and community's purposes and need. Is the purpose of conducting the investigations to make arrests? To educate retailers? To achieve voluntary compliance? To reinforce a "no-use" message? While these goals are not mutually exclusive, the manner in which the retail compliance investigations are conducted can emphasize one or more factors over others.

Working With Community Leaders

In many cases, it may be beneficial to work with community and political leaders in advance so that they will be supportive of the operations and able to field complaints and questions. The operational protocol can be discussed so that the community and political leaders are clear that the investigations are being conducted safely and fairly. This notification also provides a good opportunity for the agency to educate political leaders about the problems of underage alcohol use facing the community.

Working With the Judicial and Regulatory System

In the planning stage of the retail compliance investigations, keep in mind the potential impact of this operation on other components of the regulatory and criminal justice system. Overloading the alcohol beverage control agency, courts, or prosecutors without advance notice can be counterproductive. With advanced preparations, systems can be established to deal with the additional charges generated by the enforcement campaign.

Selecting Locations

The number of retail locations investigated will be determined by a number of factors including availability of officers, intended duration of the operation, and the expected outcomes from the investigations. There are a variety of methods for selecting the locations, including

1. **Investigating all retail locations in a community.** Lists of alcohol outlets can be obtained from alcoholic beverage control agency, zoning, or occupational licensing agencies. State, city, or county revenue departments, yellow pages, and commercial business list providers may also be sources for these lists.
2. **Selecting locations at random.** This can be done by taking the lists cited above and choosing outlets at random (e.g., every tenth outlet). This action reduces the overall resource commitment while impacting all areas of the community.
3. **Investigating all retailers in certain geographic areas.** Staffing and resource considerations may necessitate limiting the number of investigations to be conducted. The agency may consider conducting those investigations in a particular area of the community (e.g., near a college campus).
4. **Selecting certain types of outlets,** e.g., convenience stores, gas stations, or grocery stores, if these have been identified as the most common sources of alcohol for underage drinkers.
5. **Selecting locations on which the department has received a complaint or with a documented history of sales violations.**

When To Conduct the Investigations

Retail compliance investigations should be conducted in a manner designed to make them appear similar to typical buy attempts by young people. It is important to note that young people may make alcohol purchases at different times and on different days than adults. Investigations should be conducted at the same time young people would normally be attempting to make alcohol purchases.

Underage alcohol purchases tend to be earlier in the evening than those by of-age adults and are often made in conjunction with social events such as basketball and football games, concerts, and dances. Friday and Saturday nights are also prime purchase times.

Investigations conducted when young people would normally be in school or at work might alert retailers that this is a compliance investigation.

Frequency of Investigations

Conducting retail compliance investigations on an on-going basis throughout the year is the most effective manner of maintaining a presence in the community. This option requires an investment of resources that many agencies are unable to maintain. Often additional resources can be drawn from other units within the agency, such as school resource officers, park patrol officers, and juvenile officers during downtime from their regular assignments.

An alternative to conducting continuing retail compliance investigations is to schedule them periodically throughout the year. Conducting investigations over a two-week period, three to four times per year, will keep the issue fresh in the minds of beverage retailers and assist in achieving voluntary compliance.

Use of Volunteers' ID

The law enforcement agency should decide ahead of time if volunteers are going to carry their own identification. It is recommended that they carry ID and present it when asked. Often the clerk will make the sale even when presented with identification. Carrying the

ID supports the fairness of the investigation. Many times retail clerks simply ask for ID as part of a routine and do not actually examine it to determine if it is altered, current, or even belongs to the presenter. The use of a proper ID also tests the clerk's ability to accurately check the date of birth on the ID.

If the volunteers do not carry identification and they are asked for it, the volunteers should state that they do not have ID. Some clerks will still sell to them. If the volunteer's identification is carried and produced, there is a risk of temporarily identifying the buyer; however this procedure provides a more realistic test

Truthful Answers

The volunteers should be instructed to be truthful in encounters with clerks. If asked for identification, the volunteers should present identification. If asked their age, the volunteers should answer truthfully. The same is true if the clerk asks whom the alcohol is for. It is important that the volunteer not do anything to induce the clerk to make the sale. Stating that it is for someone else might cause the clerk to believe that the alcohol was for someone of legal age, creating a defense for the action later in court.

Remind the buyers that success is not measured by the number of people arrested but by the fairness of investigation.

Number of Volunteers

One underage volunteer buyer is sufficient for most retail compliance investigations. There are times and situations, however, when consideration should be given to the use of two volunteers as part of a team. Using two buyers can make the volunteers feel more comfortable and act more natural in their attempt to make a purchase.

What Should the Buyer Attempt To Purchase?

Beer is the alcoholic beverage of choice for young people. It is inexpensive and readily available. Most underage drinkers prefer the major advertised popular brands of beer. You should give consideration to selecting a brand that is popular with young people in your

area. Buyers should be discouraged from requesting expensive or unusual brands of beer, as this will draw attention to their purchase request. In some areas, wine coolers and similar beverages are also popular.

How Much Alcohol Should Be Purchased?

In most cases, the amount of alcohol purchased is not a critical element in supporting the violation allegation; one bottle or can of beer is sufficient. There may be circumstances when purchasing a larger amount of alcohol, such as a keg or case of beer, will be necessary to demonstrate that the purchase was for distribution or use beyond personal consumption. This decision will need to be based on community considerations such as community norms, legal expectations, and typical judicial actions.

Should Other Items Be Purchased With the Alcohol?

Making small purchases along with an alcoholic beverage is a normal process for of-age customers and can make the retail compliance purchase attempt appear more realistic. The particular items purchased can affect the perception of the purchaser's age. Buying snack food items may contribute to a perception that the buyer is younger while purchasing a pack of diapers may contribute to the perception that the buyer is older. While the buyer must ensure that his or her actions do not attempt to mislead the seller, care should be taken in selecting ancillary purchase items that do not necessarily make the buyer appear too young to make the alcohol purchase.

It is also important to have small bills for the purchase. Large bills requiring excessive change can focus undue attention on the buyer.

Scheduling

Retail compliance investigations can be conducted quickly. Most of the time involved in conducting the investigations will be taken for pre-planning, travel, and responding to violations. Investigations conducted in areas where the officer and volunteer can walk from store to store can be done quickly. Investigations requiring driving

longer distances may require more time. It is possible to conduct as many as 20 investigations per hour or as few as one per hour, depending on the density of outlets.

Operational Procedures

Retail compliance investigations can be conducted in a variety of ways that fit each unique situation. The most important elements are the safety of the volunteers, the safety of the officers, and the ability to observe the violations. Other elements of the operation that should be considered and planned for include the following:

- The agency vehicle should be parked in a manner so as not to tip off the clerk that a retail compliance investigation is about to occur.
- If one of the officers is in uniform and would be easily identified through the vehicle's windows, it may be prudent to park on the side of the store and drop the volunteer and other officer near the store. This approach may be appropriate if the store normally has walk-up customers and the absence of a vehicle would not be noticed. Sometimes a car parked next to the building instead of in the normal parking areas will cause the clerk to suspect that a robbery is about to take place. It is also appropriate under most circumstances for the volunteer to drive his or her own vehicle. Keep in mind that state statutes exist prohibiting minors from transporting alcohol.
- The volunteer should not dress in anything that could be interrupted as gang clothing or colors.
- The volunteer should enter the store and quickly locate the alcohol display. If alcohol is available in self-service displays, the volunteer should pick up the selected item and place it on the counter. If the alcohol can only be obtained through the store employee, the volunteer should request the alcohol by brand

name. If the alcohol is located both through self-service and employee provided areas, the volunteer should attempt self-service first.

- The officer may enter the store before or after the underage volunteer, but should not enter so close to the volunteer as to make it appear they are together. The officer should be in a position to observe the transaction and serve as a witness to the violation rather than relying solely on the statement and testimony of the volunteer. The inside officer may appear to be looking for a product or may select an item and wait in line behind the volunteer. Sometimes it may be impossible for the officer to enter the store without arousing suspicion. The other officer should be positioned outside to watch for potential problems and threats, and to support the officer and volunteer inside the store.

Once the volunteer has completed the transaction, he or she should leave the store and proceed directly to the vehicle to be debriefed. The incident report may be completed while the facts are still fresh. A copy of a sample Witness Statement Form is attached as appendix C.

If a violation has occurred and the officer is going back into the store to issue a notice to appear (NTA), the volunteer should be secured in the vehicle before the officer returns to the store. The officer who witnessed the sale may return to the store to interview the clerk and issue the NTA.

Deployment of Enforcement Personnel

While these investigations can be conducted with one officer, it is recommended that two officers be considered for these assignments. There are a number of practical considerations for this recommendation. This practice creates a safer working environment for the officers. The locations where retail compliance investigations take place may also be targets of robbery attempts.

Two officers also provide greater protection for the volunteers. One officer will be with the volunteer in the store and the other will accompany the volunteer in the vehicle. A two-officer protocol also

protects the officers from the possibility of accusations of harassment by the volunteer.

During the investigation, one officer will remain outside the business in order to observe potential hazards. The plain-clothes officer can conduct the investigation and another officer in uniform can issue the citation and conduct the interview. Having a uniformed presence reduces risk to the officers and the volunteers, and tends to shift the focus of the store clerks from the volunteers to the officers.

Issuing Citations

A key operational question to address is whether a “notice to appear” should be issued immediately after the violation or later, after the enforcement campaign has been concluded. Issuing the notices immediately may endanger subsequent investigations because of retailer-to-retailer notification.

Many retailers, especially within companies, have both formal and informal phone tree systems that they use to inform each other of hazards such as suspicious persons and activities. If investigations are being conducted within a small geographic area, it might be wise to gather sufficient physical descriptions of the clerks, including the name on a name tag if one is being worn, and move on to the next location without issuing a notice to appear on the spot. The officer can then return to the store(s) at the end of the operation to issue the appropriate notices and conduct employee interviews.

There are several factors that may influence the decision to complete the process on the spot or to come back at the end of the operation. In some jurisdictions, prosecutors may not allow a misdemeanor or violation notice to be issued once the immediacy of the violation has passed. The officer will then be required to file a sworn complaint against the seller. This may complicate the investigations by requiring an additional trip to the store to identify the seller before the complaint can be completed. Another problem often faced by officers when they defer action until later is the chance that the clerk will be off duty when the officer returns, making identification difficult.

Multiple Buys

If the purpose of the retail compliance investigation is to assess the retailer's propensity to make a sale to underage buyers, making several purchase attempts at a store in which there are multiple clerks may provide a more complete picture of the retailer's level of compliance. In this case, the use of several underage volunteers at the same time would be appropriate.

Demand To See Underage Volunteer

In some instances, the retailer will ask to see the young person, not believing that a violation occurred. This request may be handled either by establishing an agency policy or on a case-by-case basis. Often the retailer will calm down and be cooperative once they are convinced that the officer is making a correct statement.

There are several methods that officers can use to satisfy the request of a clerk to confront the witness. The officers may show the retailer a photograph of the volunteer taken before the investigation began, a photocopy of the volunteer's ID with name and address blacked out, or the officers may tell the retailer that it is the department's policy to only produce the volunteer for identification at the appropriate court or hearing.

Electronic Monitoring

When an officer is not able to be in the store with the volunteer, one way to increase volunteer safety and collect evidence on the transaction is through the use of electronic monitoring equipment. Voice and video recording and/or transmitting equipment have been successfully used throughout the country. Many times, clerks and retailers simply pay the fines when confronted with audio or video recordings of the transactions.

Keep in mind that volunteer safety should be the most important consideration. Officers should **not** rely on transmitting devices to ensure volunteer safety.

Video recording packs can easily be concealed in backpacks and provide useful evidence in court and for media release. It is important to check with the district and US attorneys before these devices are used for retail compliance investigations. State laws and previous court decisions may limit the permissible use of audio and video recordings by enforcement officers.

Seizure of the Volunteer's Identification

Officers have encountered licensees or employees who have seized the volunteers' valid identification cards, which were used as part of compliance investigations. Officers should remain calm, courteous, and professional when communicating with retailers, informing them of the reason for the visit and complimenting them on their refusal to sell to underage purchasers. They should then inform them that they are unlawfully in possession of the identification and ask that it be returned. If necessary, they can inform the clerk of potential charges and penalties if the identification is not returned.

Post Investigation Interview

In many jurisdictions, the court or a hearing officer will require evidence to show that a single violation is more than an isolated event for which the owner should not be held accountable. To obtain that evidence, it will be necessary to interview the seller to determine the level of training and supervision the owner provides store employees.

The officer should also seek to identify other evidence that demonstrates appropriate management practices, including periodic retraining of employees, the existence of a "secret shopper" program, a written and distributed policy concerning alcohol sales, and posted warning signs. Other evidence of proper management practices include policies requiring that two clerks be present where alcohol is sold and the use of technology such as scanning/locking cash registers or identification card scanners.

Other Violations

It is not uncommon to discover and make arrests for other law violations while conducting retail compliance investigations. Arrests for underage alcohol possession, attempted purchase, ID fraud, and locating wanted persons are among the most common collateral violations discovered.

Record Keeping

As the compliance investigations come to a conclusion, government and community leaders as well as the media will be interested in the results. To satisfy those inquiries, it may be useful to establish and maintain a record or chart of the results of the investigations. This will also help in developing the operational plans for the next round of compliance investigations.

The following are useful elements to identify and record as part of the retail compliance investigations:

- Store name
- Address
- Date and time
- Results of the attempt
- Type of outlet
- Employee training
- Store signage
- Number of clerks present
- Age, gender, and race of buyer
- Age, gender, and race of seller
- Item purchased
- Was ID requested
- Was ID checked
- Was a calendar or ID checking machine present and used.

Working With the Media

The primary purpose of retail compliance investigations is to foster voluntary compliance by the alcoholic beverage industry. Broad-based media exposure is very useful in obtaining this level of compliance. The perception that enforcement is widespread and continuous may deter retailers from selling to underage customers. Increased media attention to underage drinking and sales of alcohol to youth can help raise community awareness of the problems stemming from underage drinking and help shift norms away from tolerating underage drinking. Enforcement agencies should develop a positive and proactive relationship with the media.² It may be helpful to notify the media before an enforcement operation begins and to invite them along on compliance investigations. If media do ride along on compliance checks, appropriate legal advice should be given concerning permissible access on ride alongs.

At the conclusion of the investigations, the agency should be able to provide the media with the following information:

- What percentage of retailers sold alcohol to the volunteers?
- What percentage of retailers asked for ID but sold anyway?
- What percentage of retailers had warning signs posted or signs that stated they asked for ID? What percentage of those with posted signs sold?
- Are some types of businesses more likely to sell than others, e.g., convenience stores, gas stations, and grocery stores? What percentage of each sold?
- Are young clerks more likely to sell than older clerks are?
- Are two-clerk stores less likely to sell?
- Do male clerks or female clerks sell more often?

²For more information on working with the media, see *Strategic Media Advocacy for Enforcement of Underage Drinking Laws*, available from the Enforcing Underage Drinking Laws Education Training Center. Phone: (toll-free) 877-335-1287.

Dealing With Merchants and Clerks Who Comply

Many retailers want to reward employees who do an acceptable job in keeping alcohol out of the hands of young people. The agency may send congratulatory or thank-you letters to retailers who refuse to sell to the underage volunteers. Agencies may also consider giving small tokens of thanks to retail clerks immediately when they have properly refused the sale.

Criminal and Administrative Charges

In general, penalties against the licensee who sets policies and trains clerks are considered more effective than penalties against the clerks who may only be acting on the policy and training provided by the manager or owner. In almost all jurisdictions, the sale or provision of beverage alcohol to a person less than 21 years of age is a criminal violation. In most states, this can also form the basis for an administrative or civil charge against the holder of a retail beverage license, permit, or occupational license. Penalties for violation can include a fine and/or license suspension. The effect of these penalties can have a far greater impact on future voluntary compliance than the criminal charge alone since administrative or civil actions are brought against the licensee rather than the employee.

In considering whether to bring an administrative or civil action, please consider which licensing authorities might have an interest in this violation. Examples of such entities are state alcoholic beverage control agencies, city or county licensing authorities, and other specialized regulatory bodies such as gaming authorities. Many Attorneys General are also interested in looking at patterns of violations within chains or corporations under their consumer protection responsibilities.

Industry Standard

The alcoholic beverage industry has established a voluntary standard accepted by many industry members that require the checking of photo identification of anyone who appears to be under 30. That single action is the most effective action that can be taken by a

retailer in preventing the sale. The posting of calendars or the birth year of legal buyers can help show a pro-active management plan to address sales to underage youth.

Future Considerations

Retail compliance investigations can accomplish a great deal in restricting youth access to beverage alcohol. There are, however, several improvements to this type of process that might be worth considering.

One promising consideration is the development of driver's licenses and other identification that makes it easier to determine whether a purchaser is underage. For example, some states put the pictures of underage drivers in profile to make it obvious that they are not yet 21 or clearly indicate the date of their 21st birthday in order to aid clerks in identifying underage purchasers.

Agencies should consider supporting city or county ordinances that would allow some of the fines collected from retailer compliance investigations to be used to finance an ongoing program of investigation and retailer training.

Finally, agencies need to work with prosecutors, judges, and other court officers to emphasize the serious consequences of underage drinking and illegal sales of alcohol to youth. It is also important to ensure that second and subsequent violations are tracked and graduated penalties are applied.

References

Johnston, L.D., O'Malley, P.M., and Bachman, J.G. (1998). *National survey results on drug use from the Monitoring the Future study, 1975–1997: Volume 1. Secondary school students*. Washington, DC: Superintendent of Documents, U.S. Government Printing Office.

National Highway Transportation Safety Administration. (1999). *Traffic Safety Facts 1998*, DOT HS 808 950, Washington, DC: NHTSA, National Center for Statistics and Analysis.

Pacific Institute for Research and Evaluation. (1999). *Costs of Underage Drinking*. Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Underage Drinking Enforcement Training Center.

U.S. Department of Health and Human Services. (1992). *Youth and alcohol: Dangerous and deadly consequences*. Washington, DC: Department of Health and Human Services, Office of Inspector General.

Other Resources

Resources on Compliance Investigations

Alcohol Compliance Checks: A Procedure Manual for Enforcing Alcohol Age-of-Sale Laws, Alcohol Epidemiology Program, University of Minnesota, 1998.

This manual begins by discussing the reasons for conducting compliance checks and examining the evidence of their effectiveness. It then provides a step-by-step guide to planning and implementing the checks, including the review of existing ordinances; the selection of appropriate sites, merchandise, and buyers; and communicating with merchants and the community. Several model forms, sample letters, and publicity materials are included in the appendices. This resource is relevant to strategies for enforcement aimed at both retailers (e.g., use of compliance checks, education regarding techniques and responsibilities) and youth (e.g., penalties applied to violating youth).

This item is available from the Alcohol Epidemiology Program, School of Public Health, University of Minnesota, 1300 South Second Street, #300, Minneapolis, MN 55454-1015. Phone: 612-624-3818.

Model Guidelines Concerning Compliance Checks for Underage Alcohol Sales, Department of Revenue, Liquor Enforcement Division, 1997.

This short pamphlet reflects the cooperative effort of law enforcement, local and county governments, the liquor industry, and the legal profession to create practical guidelines for conducting compliance checks or sting operations. The guidelines address why a compliance check should be conducted, the characteristics of the underage purchaser, identification, general procedures for the purchaser and law enforcement, notification of the licensee, suggested penalties, and re-checks.

This item is available from the Department of Revenue, Liquor Enforcement Division, 1375 Sherman Street, Denver, CO 80261. Phone: 303-205-2300.

Preventing Youth Access to Alcohol from Commercial Sources, Strategizer No. 28, Community Anti-Drug Coalitions of America (CADCA), n.d.

This CADCA Strategizer summarizes the key policies that can be enacted to reduce youth access to alcohol. The summary includes compliance checks, administrative penalties, and age identification policies. The guide also discusses the benefits of beer keg registration and regulations on home delivery. It also lists strategies that merchants can implement, such as responsible beverage training and warning signs about the consequences of alcohol use.

This item is available from CADCA, 901 North Pitt Street, Suite 300, Alexandria, VA 22314. Phone (toll free): 800-54-CADCA.

Retail Oriented Best Practices for Underage Drinking Prevention: An Exemplary Selection of Retail Oriented Programs and Practices Aimed at Reducing Underage Drinking and Related Drinking and Driving, National Highway Traffic Safety Administration, 1997.

A 38-page book profiling programs across the nation that address drinking and driving, enforcement, false identification, seller training, compliance, and assistance. To be included in the book, a program had to meet nine criteria established by the National Alcohol Beverage Control Association and pass an expert review panel. The resulting profiles identify a target audience, describe the program and any special features or evaluation, and indicate why the program is effective and when it was established.

Information on the legal basis for the program, as well as its distribution, funding, and supporting data is included. The profiles also provide contact information. This resource is particularly relevant to the strategy of enforcing minimum purchase age laws, both with retailers (e.g., seller training, compliance checks) and youth (e.g., false identification, “Cops in Shops”).

This item is available from NHTSA, Attention: TSP Resource Center Orders, 400 Seventh Street, SW, Washington, DC 20590. Phone (toll-free): 800-424-9393. Fax: 202-493-2062. Publication No. DOT HS 808 618.

Other Enforcement Operations Guides in this Series

Enforcing Impaired Driving Laws for Youth

A Practical Guide To Preventing and Dispersing Underage Drinking Parties

Strategies for Reducing Third-Party Transactions of Alcohol to Underage Youth

These publications were prepared by the Pacific Institute for Research and Evaluation in support of the Office of Juvenile Justice and Delinquency Prevention's Underage Drinking Enforcement Training Center. They are available from Pacific Institute for Research and Evaluation, 11140 Rockville Pike, Suite 600, Rockville, MD 20852. Phone (toll-free): 877-335-1287. Fax: 301-984-6559.

Other Publications of the Underage Drinking Enforcement Training Center

How To Use Local Regulatory and Land Use Powers To Prevent Underage Drinking

A Guide To Evaluating Prevention Effectiveness

Strategies To Reduce Underage Alcohol Use: Typology and Brief Overview

Guide To Conducting Alcohol Purchase Surveys

Guide To Conducting Youth Surveys

Strategic Media Advocacy for Enforcement of Underage Drinking Laws

Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices

Tips for Soliciting Cohesive Enforcement Program Plans

Costs of Underage Drinking, Updated Edition

***Preventing Sales of Alcohol to Minors: What You Should Know
About Merchant Education Programs***

***Guide to Responsible Alcohol Sales: Off-Premise Clerk, Licensee, and
Manager Training***

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Investigative Aide Personal History Form

Name _____

Address _____ City / State _____

Date of Birth _____ Age _____ Height _____ Weight _____

Hair Color _____ Eye Color _____

Telephone # (Home) _____ (Work) _____

Drivers License & State Issued _____

Traffic Violation History _____

Birth Certificate # (If no driver's license) _____

Occupation _____

Business / School _____

Address _____ City / State _____

Vehicle (Make, Model, Year) _____

Have you ever been arrested or been given a Notice to Appear in court for a violation of criminal law? If yes, explain

Have you ever used false identification? _____

I swear the above information is true and correct under penalty of perjury.

Signed: _____ Date: _____

Witness: _____ Date: _____

F O R O F F I C I A L U S E

Results of local Record and Driver's License Check _____

Date Accepted into Program _____ Issued ID # _____

Investigative Aide Program Agreement of Understanding

1. I, the undersigned, hereby agree as a volunteer to assist _____ in the investigation of the sale of alcoholic beverages to underage persons. It is understood that I am not an employee of the department nor related to an alcoholic beverage licensee and that my participation is as the need arises, based on my availability.
2. I hereby release and acquit the department, its agents, and its employees from any injury or liability that I may suffer or sustain in the future as a result of these investigations.
3. This agreement is entered into of my own free will and not as a result of intimidation, threats, coercion, or promises.
4. I agree to show real identification and respond truthfully as to my legal age if asked for same by the licensee or his employee during any of these investigations. I also agree that my dress will be such that it will not make me appear to be of legal age and in the case of males will be clean.
5. It is understood that I am not a law enforcement officer and will not represent myself in that manner at any time, and that I am not entitled to carry a firearm or a badge.
6. It is understood that participation in this program does not extend any special privileges to me and that any violation of law, except at the direction of an officer, failure to abide by the terms of this agreement, failure to follow instructions or procedures of the department, or any school-related problems including attendance and grades, will be grounds for termination from this program.
7. It is understood that I may not sample any alcoholic beverages that are purchased on behalf of the department and shall promptly turn over and such purchases to the officers of the department for evidentiary purposes.
8. It is understood that I may be required to testify in criminal or administrative hearings.

SIGNED: _____ DATE: _____

WITNESS: _____ DATE: _____



Witness Statement / Affidavit

My full name is _____ . My date of birth is _____ .

I am assisting the _____ in the investigation of sale / delivery / service of an alcoholic beverage to a person under 21 years of age.

Before initiating my assistance, I read, understood, and signed an Agreement of Understanding supplied to me.

The following statements pertain to my assistance in the above styled investigation and are given freely, voluntarily, and without threat or promise of wages having been made to me in return for my assistance:

1. On _____ , at approximately _____ am/pm, at the direction of Officer _____ , I entered a premises known as _____ and located at _____ .
2. Prior to this date I was not acquainted with any person(s) involved in the ownership or operation of the described premises: nor have I ever attempted to purchase alcoholic beverages at this premises except at the direction of the department.
3. Prior to my entering the described premises, Officer _____ determined that I did not have in my manual possession any false identification or alcoholic beverages.
4. Upon entering the premises, I did the following (detail your purchase of alcoholic beverages including a description of the product(s)).

5. Everything that I said to the person from whom I obtained the alcoholic beverage(s) is as follows:

6. Everything that the person noted in #5, above, said to me is as follows:

7. The following is a description of the person from whom I purchased the product noted in #4, above:

Race _____ Sex _____ Notable Characteristics _____

8. During my participation in this investigation, I was not under the influence of, nor did I consume, any alcoholic beverages or any other intoxicating substances.

9. If needed, I will testify at any and all legal proceedings.

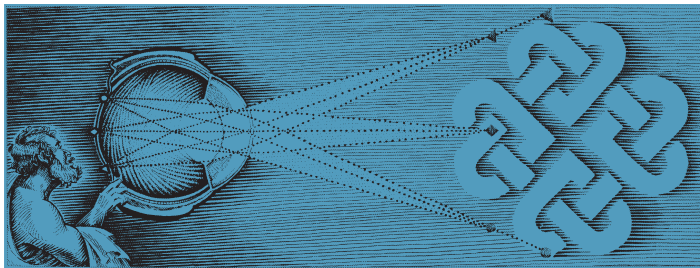
I have read the forgoing statement consisting of two (2) pages. I fully understand this statement and attest to its truthfulness, accuracy, and completeness to the best of my knowledge and belief.

Further Sayeth the Affiant Not.

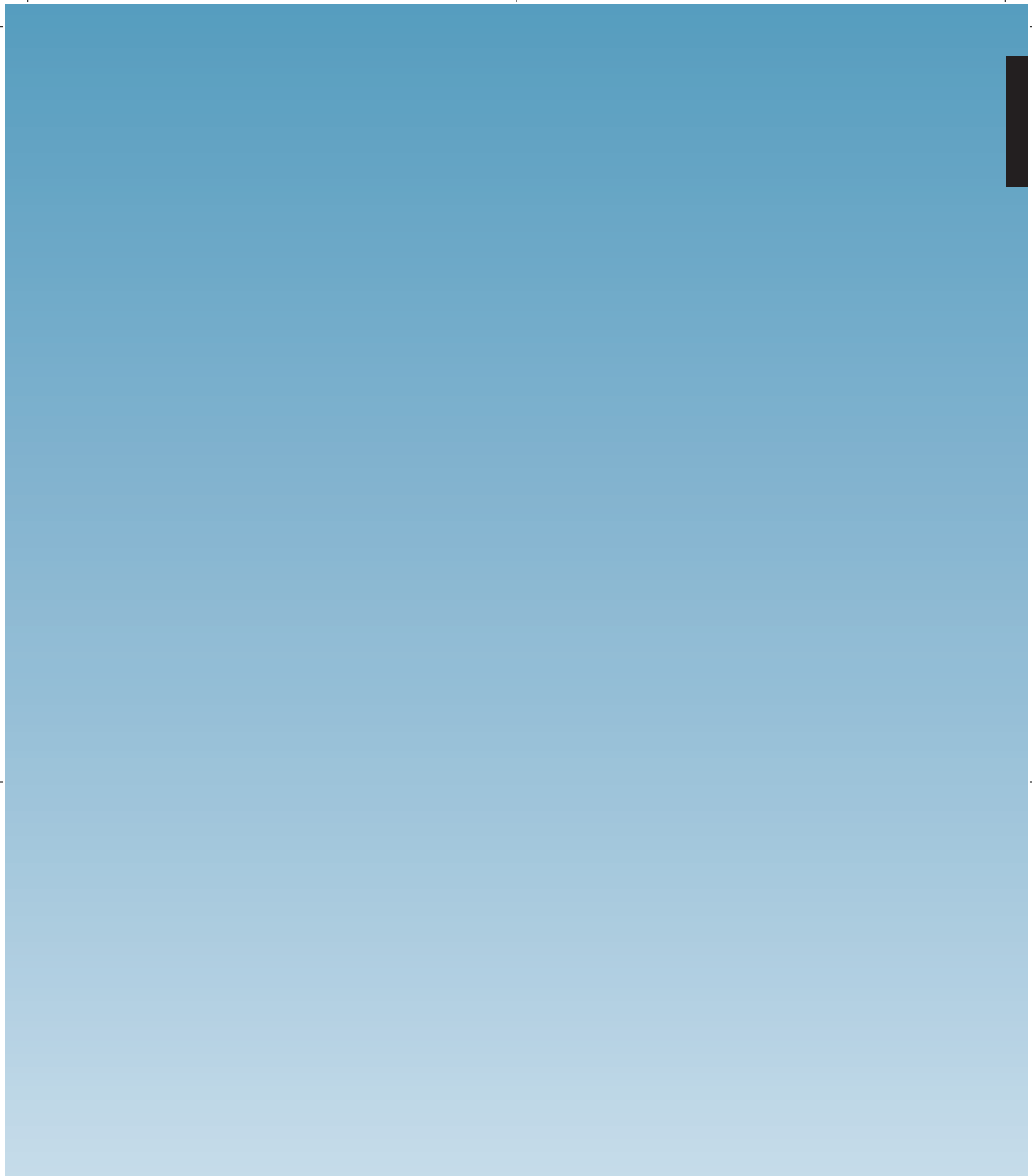
Signature of Affiant _____

Subscribed and Sworn to Before Me.

This _____ day of _____,
_____ State / County.



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The Underage Drinking Enforcement
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