

## **CHAPTER 4**

# **Report on State Programs and Policies Addressing Underage Drinking**

## **CHAPTER 4.1**

### **Introduction**

This document is excerpted from:

**The December 2015 Report to Congress on the Prevention and Reduction of Underage Drinking**



# **CHAPTER 4.1**

## **Introduction**

The Sober Truth on Preventing Underage Drinking (STOP) Act recognizes the critical role that states play in the national effort to reduce underage drinking, particularly in their role as regulators of the alcohol market. Its preamble includes this statement of the sense of Congress:

Alcohol is a unique product and should be regulated differently than other products by the States and Federal Government. States have primary authority to regulate alcohol distribution and sale, and the Federal Government should support and supplement these State efforts. States also have a responsibility to fight youth access to alcohol and reduce underage drinking. Continued State regulation and licensing of the manufacture, importation, sale, distribution, transportation, and storage of alcoholic beverages are ... critical to ... preventing illegal access to alcohol by persons under 21 years of age.

To this end, the Act directs the Secretary of the Department of Health and Human Services (HHS), working with the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD), to provide an annual report on state activities pertaining to underage drinking prevention programs, policies, related enforcement efforts, and state expenditures.

This year's report provides the following information for the 50 states and the District of Columbia (henceforth referred to as "states"):

1. Information on 25 underage drinking prevention policies focused on reducing youth access to alcohol and youth involvement in drinking and driving. Consistent with the STOP Act requirement to report on "evidence-based best practices to prevent and reduce underage drinking and provide treatment services to those youth who need them," most policies have been identified as best practices by a variety of relevant federal agencies (see "Best Practices" below).
2. Data from a survey addressing underage drinking enforcement programs; programs targeted to youth, parents, and caregivers; collaborations, planning, and reports; and state expenditures on the prevention of underage drinking.

## Underage Drinking Prevention Policies

This section presents summaries of the 25 policies that describe each policy's key components, the status of the policy across states, and trends over time. Summaries are followed by a state-by-state analysis of each policy. The policy variables for each state are linked electronically to both the relevant policy summaries and the definitions of each variable.

Seventeen of these policies were included in original STOP Act legislation or were recommended by Congress during the 2009–2010 appropriations process. The remaining six policies were added at the request of SAMHSA following input from various stakeholders. The report obtained data for 13 of the policies, including the 6 added by SAMHSA, from the National Institute on Alcohol Abuse and Alcoholism (NIAAA) Alcohol Policy Information System (APIS).

It is important to note that not all of these state policies will apply on tribal lands. Some will vary by tribe and land type. Such variations are beyond the scope of this report.

The following policies are included (underlined policies are available on APIS):<sup>66</sup>

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<sup>66</sup> See Appendix H for a detailed chart of non-APIS policies in each state.

### **Laws Addressing Minors in Possession of Alcohol**

1. Underage possession
2. Underage consumption
3. Internal possession by minors
4. Underage purchase and attempted purchase
5. False identification

### **Laws Targeting Underage Drinking and Driving**

6. Youth blood alcohol concentration limits
7. Loss of driving privileges for alcohol violations by minors
8. Graduated driver's licenses

### **Laws Targeting Alcohol Suppliers**

9. Furnishing of alcohol to minors
10. Compliance check protocols
11. Penalty guidelines for sales to minors
12. Responsible beverage service
13. Minimum ages for off-premises sellers
14. Minimum ages for on-premises servers and bartenders
15. Outlet siting near schools
16. Dram shop liability
17. Social host liability
18. Hosting underage drinking parties
19. Retailer interstate shipment
20. Direct sales/shipments
21. Keg registration
22. Home delivery

### **Laws Affecting Alcohol Pricing**

23. Alcohol taxes
24. Drink specials
25. Wholesale pricing

### **Best Practices**

The majority of the underage drinking prevention policies analyzed in this chapter have been identified as best practices by one or more of the following four sources:

- Community Preventive Services Task Force (*Guide to Community Preventive Services. Preventing excessive alcohol consumption*, <http://www.thecommunityguide.org/alcohol/index.html>. Last updated: 05/16/2011).
- The Surgeon General (*The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking*, 2007).

- Institute of Medicine (IOM) (*Reducing Underage Drinking: A Collective Responsibility*, 2004).
- National Institute on Alcohol Abuse and Alcoholism (*A Call to Action: Changing the Culture of Drinking at U.S. Colleges*, 2002).

Exhibit 4.1.1 lists the 25 policies analyzed in Chapter 4. An X indicates that a given policy is endorsed as a best practice by one or more of the four federal sources.

As can be seen in Exhibit 4.1.1, 18 of the policies are endorsed as best practices by at least one source document, and more than half of the policies are endorsed as best practices by two or more source documents. Seven policies were not endorsed by any of the sources. Four of these (Direct Sales, Minimum Age for On-Premises Servers, Minimum Age for Off-Premises Servers, and Internal Possession) are included on NIAAA’s APIS website. As relatively recent concerns, these policies likely had not been thoroughly studied at the time the federal source documents were prepared. One policy (Outlet Siting Near Schools) not specifically endorsed by any of the sources examined was addressed at a more general level by two sources—the Community Services Prevention Task Force and the NIAAA *Call to Action*. These sources included restrictions on alcohol outlet density as a best practice without specifically endorsing the reduction of alcohol outlet density near schools. Retailer Interstate Shipment, the final policy not endorsed by the four sources, is closely linked to the Home Delivery policy (which is endorsed).

It is important to note that, although all 25 of the policies can be described as evidence based, the data that support each of them are different. Some policies find greater or lesser support in the research literature and in the source documents.

## State Survey

This section provides both the complete responses of the states to the survey (included in the state-by-state analysis described above) and a cross-state report. The cross-state report summarizes the findings across states and presents data on variables amenable to quantitative analysis.

The survey content was derived directly from the STOP Act, covering topics and using terminology from the Act. The survey questions were structured to allow states maximum flexibility in deciding which initiatives to describe and how to describe them. Open-ended questions were used whenever possible to allow states to “speak with their own voices.” The survey addressed four main areas:

- Enforcement programs
- Programs targeted to youth, parents, and caregivers
- Collaborations, planning, and reports
- State expenditures on prevention of underage drinking

**Exhibit 4.1.1: Underage Drinking Prevention Policies – Best Practices**

Underage drinking prevention policies	Recommended by the Community Preventive Services Task Force	Addressed in the Surgeon General's Call to Action	IOM Report, Reducing Underage Drinking: A Collective Responsibility	A Call to Action: Changing the Culture of Drinking at U.S. Colleges (NIAAA)
<b>Policies included in original STOP Act legislation or added in 2009 2010 appropriations</b>				
Purchase or attempt to purchase alcohol by minor		X	X	
Consumption by minor		X	X	
Possession by minor		X	X	
False identification/Incentives for retailers to use ID scanners or other technology		X	X	
Penalty guidelines for violations of furnishing laws by retailers				X
Furnishing or sale to a minor		X	X	
Hosting underage drinking parties		X	X	
Dram-shop liability	X		X	
Social-host liability			X	
Compliance checks	X	X	X	
Mandatory-voluntary server-seller training (Responsible Beverage Service programs)		X	X	X
Direct sales (Internet/mail order)				
Home delivery			X	
Graduated drivers' licenses		X	X	X
Increasing alcohol tax rates	X		X	X
Restrictions on drink specials		X	X	X
Wholesaler pricing provisions				
<b>Policies added at the request of SAMHSA</b>				
Keg registration		X	X	
Minimum age for on-sale server				
Minimum age for off-sale server				
Internal possession				
Youth BAC limits ("Zero Tolerance")		X	X	X
Loss of privileges for alcohol violations by Minors (Use/Lose Law)				X
Outlet siting near schools				
Retailer interstate shipment				

## Enforcement

A significant component of the STOP Act's mission is to collect data and report on each state's performance in enforcing policies designed to prevent or reduce underage drinking. As indicated above, the annual STOP survey includes a section devoted to enforcement of these laws, ranging from the types of programs or actions implemented, whether they are conducted at both the state and local level, number(s) of enforcement actions taken (when available), and state expenditures

made on enforcement activities. The following discussion of enforcement provides the background and context for these data.

## Concepts

### Mechanisms

Typically, an alcohol policy seeks to change the behavior of targeted individuals, groups, or organizations. The intended change in behavior may or may not occur, depending in part on the extent to which the policy is enforced.

The role of enforcement in policy effectiveness varies depending on the nature of the policy. At one extreme, policies such as alcohol taxes are virtually self-enforcing in that sellers must regularly report sales data. By contrast, laws that prohibit sales to minors require relatively high enforcement levels to achieve compliance at desirable levels. In this case, detecting a violation may require regular compliance checks and recording sources of alcohol from minor in possession arrests.

It is important to distinguish between compliance and enforcement. *Compliance* is the extent to which an individual, organization, group, or population acts in accordance with a specific public policy. *Enforcement* is the sum total of actions taken by public entities to increase compliance. Enforcement includes three components: policing, adjudication, and sanctioning. Enforcement data collected by the STOP Act generally combine adjudication and sanctioning because the latter usually requires the former.

The impact of enforcement on compliance with alcohol policies is a function of both actual and perceived levels of enforcement (i.e., levels of policing, adjudication, and sanctioning). *Actual* enforcement levels may vary depending on the strategies employed (e.g., random vs. complaint-based compliance checks) and on quantitative differences in policing, adjudication, and sanctioning (e.g., numbers of officers on patrol, severity of sanctions). *Perception* of the probability of apprehension (policing), swiftness and certainty of a penalty (adjudication), and severity of the penalty (sanctioning) also affect compliance with a particular policy. These perceptions are key factors in the extent to which an alcohol-related policy functions as a deterrent to illegal behavior (Ross, 1992).. Factors that affect these perceptions, such as publicity about enforcement efforts, may be construed as part of enforcement (Hingson et al., 1996). Compliance may also be affected by extra-legal factors (See Exhibit 4.1.2).

A large body of literature addresses the factors related to effective enforcement (Klitzner, 2002; Klitzner & Sole-Brito, 2002; Levy, 2002). It is important to note that policies and their enforcement cannot be distinguished easily in practice. Laws may specify sanctions (e.g., use/lose laws) or enforcement practices (e.g., administrative license revocation).

**Exhibit 4.1.2: Contextual Factors Affecting Compliance<sup>67</sup>**

Variable	Relevance to Enforcement	Relevance to Compliance
<b>Knowledge and awareness on the part of enforcement personnel and the public</b>	Enforcement personnel who lack knowledge of a law or policy or lack skills in using enforcement technologies (e.g., field identification of intoxication) may be less effective in enforcement activities.	Increasing public awareness of the existence or enforcement of a policy and efforts to enforce it tends to increase compliance
<b>Costs</b>	Increasing costs of enforcement (either absolute or relative to benefits) can decrease the attractiveness of an enforcement effort to policymakers, who must balance enforcement against other priorities.	Policy complexity may tend to reduce compliance if (1) the burden of complying is increased in terms of details that must be addressed, work that is required, or costs that must be incurred, or (2) the risk that noncompliance with specific provisions will be detected is perceived as low.
<b>Complexity</b>	All else being equal, complex laws or policies may be more difficult to enforce (detect and prosecute) than simple laws or policies.	When laws or policies are complex, compliance may be reduced (1) due to the sheer amount of detail involved in complying, (2) due to the work and cost involved in complying, or (3) if the risk of detection of small deviations is low.
<b>Norms</b>	Enforcement personnel tend to act in accordance with prevailing norms, more vigorously enforcing laws and policies prohibiting behavior that is counter-normative in a given community than behavior that is socially acceptable.	Avoidance of specific behaviors may be as much a function of their social acceptability as of legal proscriptions. Thus, for a given level of enforcement, compliance may vary as a function of community norms.
<b>Public Support</b>	High public support can facilitate enforcement through allocation of public funds, political support for public officials who advocate strong enforcement, or formal or informal cooperation between citizens and public safety officials.	Public support is a visible manifestation of norms. As such, public support for a given law or policy should tend to increase compliance.
<i>Note:</i> For further discussion of these factors, see <a href="http://alcoholpolicy.niaaa.nih.gov/enforcement#lit">http://alcoholpolicy.niaaa.nih.gov/enforcement#lit</a> for literature reviews and analyses, and see two publications, Holder (1998) and Gruenewald, Treno, Taff, & Klitzner (1997).		

<sup>67</sup> Adapted from the Alcohol Policy Information System (APIS) Enforcement and Compliance resource, Table 3 (Sample Contextual Factors), [http://alcoholpolicy.niaaa.nih.gov/uploads/Table\\_3\\_-\\_Sample\\_Contextual\\_Factors\\_12\\_18\\_07.pdf](http://alcoholpolicy.niaaa.nih.gov/uploads/Table_3_-_Sample_Contextual_Factors_12_18_07.pdf).

Deterrence theory (Ross, 1984) is the most widely used model of enforcement effectiveness. It stipulates that undesirable behavior will be reduced to the extent that those targeted by enforcement activities (e.g., alcohol retailers) perceive that threatened sanctions are certain, severe, and promptly imposed (celerity). Ross argued that severity is largely irrelevant when certainty of punishment is low and, conversely, that even mild penalties have a deterrent effect when sanctions are a near certainty (e.g., parking enforcement). As noted by Klitzner and Sole-Brito (2002), Ross is essentially stating that deterrence is a multiplicative function of the perceived risk of being punished and the perceived severity of penalties. The importance of celerity is debatable, because the most commonly cited example (Administrative License Revocation for impaired driving offenses) increases both celerity and certainty. Although the deterrence literature is largely focused on criminal activity, the same concepts apply in a variety of other areas not generally considered criminal, for example, compliance with health care regulations (Bartrum & Bryant, 1997; Walker, 2002).

Deterrence is generally divided into two types, deterrence aimed at convicted offenders (secondary or specific deterrence) and deterrence aimed at the general public (primary or general deterrence). Incapacitation (supervision, incarceration, a number of hybrids such as electronic monitoring, license revocation, etc.) is a widely used form of specific or secondary deterrence in the United States. Whatever effects incapacitation may have on individuals' propensity to engage in future crime, they are less likely to recidivate while incarcerated or under supervision.

Vingilis (1990) suggested that the importance of classical deterrence diminishes as norms against a behavior increase. When norms are strong, only those who are "abnormally socialized" need an additional motivation to behave. The author argues that the behavior of most citizens is governed by informal social sanctions, and cautions that (a) effective enforcement and deterrence are interactions among individuals and environments and (b) deterrence is dynamic, with the population that is deterred by a given enforcement activity constantly in flux.

## Measures

The research literature relies on three types of measurements to assess extent and effectiveness of enforcement interventions. *Categorical measures* assess which of a set of possible enforcement strategies (e.g., random vs. complaint-based compliance checks) or sanctions (e.g., use/lose penalties) are implemented in a jurisdiction. *Quantitative measures* assess the resources devoted to enforcement (personnel, budgets, specialized equipment), number of enforcement activities (e.g., shoulder tap operations) conducted, number or percentage of persons or entities targeted, number of sanctions imposed, and severity of sanctions imposed. These measures are sometimes referred to as "enforcement pressure." *Surrogate measures* use compliance rates (e.g., number of retail outlets that fail compliance checks, number of minors in possession (MIP) arrests, or number of young people and retailers that actually receive sanctions) to measure enforcement. These measures reflect an amalgam of both enforcements and compliance (Gruenewald et al., 1997) and should be viewed with some caution.<sup>68</sup>

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<sup>68</sup> To be fully useful as measures of enforcement, these data must be corrected for enforcement pressure. However, measures of enforcement pressure can be difficult and expensive to obtain. Accordingly, arrests, compliance check failures, and similar data are often used in enforcement research.

## Literature

Historically, studies that have tested enforcement interventions in relation to outcomes such as incidents of drinking and driving and underage drinking parties make clear that enforcement can result in greater compliance and better public health outcomes (Preusser, Ulmer, & Preusser, 1992). However, enforcement of underage drinking policies is often uneven, inconsistent, and sporadic, and outcomes generally diminish over time (Ferguson, Fields, & Voas, 2000; Forster et al., 1994; Montgomery, Foley, & Wolfson, 2006; Mosher, Toomey, Good, Harwood, & Wagenaar, 2002; Preusser et al., 1992; Voas, Lange, & Tippetts, 1998; Wagenaar & Wolfson, 1995; Wolfson, Wagenaar, & Hornseth, 1995).

Of all enforcement practices, compliance checks (or decoy operations) have been most frequently studied (and are one focus of the STOP Act State Survey data presented later in this report). These practices, in which trained underage (or apparently underage) operatives (“decoys”) working with law enforcement officials enter retail alcohol outlets and attempt to purchase alcohol, are a way of reducing sales of alcohol to minors. The 2003 IOM report on preventing underage drinking (National Research Council and Institute of Medicine, 2004) includes the recommendation that compliance checks be carried out regularly and comprehensively, at the state and local level.

A national study collected data from state alcohol beverage control agencies and a random sampling of local law enforcement agencies (Erickson, Smolenski, Toomey, Carlin, & Wagenaar, 2013; Rutledge et al., 2013). Respondents were asked to report on the number of compliance checks they conducted and on such recommended practices as (a) checking all outlets in their jurisdiction; (b) conducting checks at least three or four times a year; and (c) conducting a follow-up check of establishments within 3 months of having failed a compliance check. Thirty-nine percent of local agencies and 79 percent of state agencies indicated they conducted compliance checks (Toomey, Lenk, Nelson, Jones-Webb, & Erickson, 2012). Although 60 percent of the agencies reported checking all outlets in their jurisdiction, only one fifth conducted checks three to four times a year, and one third conducted follow-up checks. Only 4 to 6 percent conducted all three recommended practices (Erickson et al., 2014). As with previous studies, the use of compliance checks to enforce underage sales policies was found to be uneven and inconsistent in intensity.

A number of studies have used experimental designs to determine whether increasing the number of compliance checks results in lower rates of sales to minors. The NIAAA-funded Community Trials Project conducted experimental interventions to reduce underage drinking in three cities, including a six-fold increase in compliance checks in a randomly selected group of test outlets. At follow-up, the test outlets were half as likely to sell to minors as control sites (Grube, 1997). An enhanced enforcement campaign in Concord, New Hampshire, employed quarterly compliance checks of all off-sale licensees, enhanced administrative penalties, and a media campaign (Centers for Disease Control and Prevention, 2004b). As with the Community Trials Project, this campaign resulted in a 64-percent reduction in sales to minors, and a temporary reduction in alcohol consumption and binge drinking among high school students. A multicomponent time series trial, *Complying with the Minimum Drinking Age (CMDA)*, also tested increased enforcement compliance checks, comparing this strategy with training retail outlet managers to reduce risks associated with alcohol sales (Wagenaar, Toomey, & Erickson, 2005). Although the effects of the training program were mixed, the compliance check

intervention resulted in an immediate 17-percent reduction in underage sales. Over a 3-month period, these effects decayed completely in the case of off-sale premises and by half among on-sale premises. Data from the CMDA study also demonstrated that the effects of compliance checks may spill over to neighboring establishments (Erickson et al., 2013). Outlets that had a close neighbor that had been checked were less likely to serve to underage-appearing decoys.

Some of these experimental studies have included media campaigns to increase (a) public awareness of enforcement efforts, (b) the perception of risk of arrest, or (c) the perception of risk of sanctions. As discussed above, these perceptions can play an important role in compliance with the law. When community-based interventions to prevent underage drinking or other alcohol-related harms include a media campaign, this may increase public perception of the likelihood that the law will be enforced, and violators sanctioned. The Saving Lives Program was a comprehensive, multifaceted program undertaken in six Massachusetts communities to reduce alcohol-impaired driving and related problems (Hingson et al., 1996). In addition to enhanced enforcement and educational programs, media campaigns were implemented to increase public awareness of the issue. Among other results, these communities showed a 42-percent decline in alcohol-related fatal crashes relative to the rest of the state. Awareness of enforcement notably increased among teenagers. For example, the percentage of this group that believed the license of a person caught drinking and driving could be suspended before a trial increased from 61 percent to 76 percent in the test communities, compared with no change in the rest of the state. The Community Trials Project discussed above also combined enhanced enforcement with local media coverage. Highly visible enhanced enforcement, such as roadside checkpoints, also served to increase both actual enforcement and perceived risk of arrest (Grube, 1997; Holder et al., 2000). This combination of environmental strategies resulted in lower volumes of self-reported drinking and fewer nighttime crashes.

A key determinant of enforcement effectiveness is the resources devoted to enforcement actions. A study that examined the relationship among underage alcohol policies in 50 California cities, enforcement of these policies, and adolescent alcohol use, identified an inverse relationship between the funding of enforcement of underage drinking laws and frequency of past-year underage alcohol use (Paschall, Grube, Thomas, Cannon, Treffers, & 2012). Similarly, a study of binge drinking among college students found a significant association between binge drinking rates and state ratings for resources devoted to enforcement (Nelson, Naimi, Brewer, & Wechsler, 2005).

## **Practices**

The STOP Act survey includes questions about the practices used by the states (and to the extent known) by local law enforcement to enforce underage drinking policies. Whether at the point of sale or through other forms of illegal access to alcohol, these practices aim to both prevent current underage possession and consumption and deter future incidents.

In addition to compliance checks (discussed above), two other enforcement strategies are employed at the point of sale to prevent youth access to alcohol: Cops in Shops and shoulder tap operations (National Research Council and IOM, 2004; Paschall, Flewelling, & Grube, 2009). Cops in Shops is a program developed by the Century Council (sponsored by the alcohol industry) in which undercover law enforcement officers pose as employees or customers in retail alcohol outlets in order to catch underage persons who attempt to purchase alcohol or adults who

purchase alcohol for minors. Cops in Shops campaigns involve voluntary participation of retailers and are often well publicized, with the goal of educating the public and providing a deterrent effect to underage access to alcohol.

Shoulder tap operations are another type of decoy operation. Because young people may perceive asking an adult to purchase alcohol for them as a less risky strategy for obtaining alcohol, this is another important point of access for law enforcement to address. In actual transactions, both the underage person and the adult are in violation of the law. In shoulder tap operations, trained young people (decoys) approach individuals outside of retail alcohol outlets and ask them to make an alcohol purchase. If the adult makes the purchase and gives it to the decoy, law enforcement may cite or arrest the adult.

Away from the point of sale, youth frequently are able to access alcohol at parties or other social gatherings. Parties are often cited as a high-risk setting for underage alcohol consumption, and are linked to impaired driving, violence, and property damage (Hoover, 2005). In response, many local law enforcement agencies have used party patrols to intervene. Party patrols (or party dispersal) operations are patrols that identify underage drinking parties and make arrests and issue citations at underage drinking parties. Police may use local noise or nuisance ordinances as the basis for entering the premises of parties involving underage drinking. They may conduct regular weekend patrols of locations where underage parties or gatherings are known to occur (National Research Council and IOM, 2004).

The data collected by the STOP Act survey provide greater insight into the use of such practices as compliance checks, Cops in Shops, shoulder tap operations, and party patrols by states and local jurisdictions. Together with the data collected on MIP arrests, penalties imposed for sales to minor violations, and state expenditures on enforcement, a more detailed picture of the underage drinking enforcement environment is being composed, both by individual states and nationwide.