



NLLEAGRAM

National Liquor Law Enforcement Association

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Message from the President

Members and Friends of NLLEA:

There is only one thing worse than work, and that is, of course, "no work." I hope that none of us experiences this in our present jobs, and can assure you that is not the case with the NLLEA.

I have just returned from an educational summit in Washington, D.C., where I represented the Association on a panel comprised of industry members, regulators, alcohol policy representatives and researchers. The event was hosted by the National Alcohol Beverage Control Association (NABCA) and dealt with key concerns of state ABC agencies, legislators and communities relating to the sale, marketing and distribution of alcohol beverages. Once again, the NLLEA had a presence in a national setting dealing with alcohol issues. I expect this trend will continue.

Likewise, the NLLEA Board/Advisory Group attended ceremonies in Washington, D.C. in May celebrating "National Police Week." While alcohol law enforcement has been referred to as, "The Redheaded Stepchild of Law Enforcement", we are committed to changing that image. It will take time, but the hair color will eventually change...

Through a generous grant from the National Conference of State Liquor Administrators (NCSLA), the 2002 NLLEA National Academy was highly successful. With tight budgets and travel restrictions, the grant was a godsend. For those agencies who were able to send participants, I trust you found that the academy

was a worthwhile investment, not only in terms of the training and education your staff received, but also in their contacts with other attendees. It's through sessions such as the Academy that immeasurable good is accomplished that reap benefits in the years ahead.

Gary Sullivan has been working tirelessly in arranging the NLLEA Annual Conference in Cleveland, Ohio this August. It promises to be a memorable event for everyone. We hope to reach another milestone at the conference by awarding the first-ever NLLEA Honorary Membership to Ohio's First Lady, Hope Taft, for her commitment and work in alcohol beverage issues. Gary has put together an impressive conference, both in terms of training sessions as well as social activities. Attend the conference and I'm sure you'll agree, "Cleveland Rocks!"

I sincerely wish each of you an endless summer, but know that wishes don't always come true. Summer does end; and when it does, I look forward to seeing you in Cleveland.

Best wishes, always,

Roger Johnson, President
NLLEA

What's New

NLLEA Annual Conference Coming Up!

By now you should have received your packet on the upcoming annual NLLEA conference to be held in Cleveland, Ohio from August 24-28, 2002. The Ohio Investigative Unit has planned quite an agenda for the conference, including sessions on audio intelligence devices, charitable gambling, criminal investigations, coalition building, and successes in state enforcement of youth tobacco access laws, among others. In addition, 100 seats are reserved for an Indians/Detroit Tigers baseball game on Monday evening, the 26th of August. The deadline for registering for the conference is July 1st, so be sure to send in your registration form as soon as possible. If you did not receive a conference information packet, please call Paul Rapp of the Ohio Investigative Unit at 614-752-5565 or the general NLLEA number at 301-755-2795. You may also download the conference information from the NLLEA website at <http://www.nllea.org/Conferences.htm>.



Compliance Checks Now Permitted in Wyoming!

With Governor Geringer's signature in March, 2002, the Wyoming State Legislature enacted House Bill 0059. Under HB 0059, the Department of Health may work with local law enforcement agencies to conduct alcohol compliance checks. The bill provides an exemption to anyone who is participating

in a compliance check from being prosecuted under Wyoming's alcohol purchase laws (W.S. 12-6-101 and 12-5-203). The bill also provides guidelines for local law enforcement agencies who wish to begin conducting compliance checks. As Thomas Montoya, Chief of Enforcement for the Wyoming Liquor Division commented, "Several community leaders throughout Wyoming were hesitant to allow their local law enforcement agencies to conduct compliance checks because there were no guidelines in state statutes. Now that we have this law on the books, more municipal police departments will be conducting compliance checks. We will also be working on a statewide tracking mechanism for compliance checks. This will allow us to target areas in the state that need server education or stricter enforcement actions." Anyone interested in reading the specific language of the bill can download the information from the following web site: <http://legisweb.state.wy.us/2002/hbidx.htm>.

Hot Issues

Underage Drinking and the Role of Alcohol Laws and Enforcement

Many of you may have seen the recent press coverage regarding underage college students¹ drinking behavior as reported in the Harvard School of Public Health College Alcohol Study. While the focus of much of the press coverage reported the disturbing fact that 44% of students in the survey could be classified as binge drinkers in 2001, the study also found some important associations between states with extensive laws restricting underage and high-volume drinking and actual drinking practices of underage college students.

The completed 2001 College Alcohol Study was a survey of students at 119 colleges selected as a representative sample of accredited 4-year colleges and universities in 38 states and the District of Columbia. The survey asked students a series of questions about their alcohol use and associated

¹Wechsler H, Lee JE, Nelson TF, Kuo M (2002). Underage College Students' Drinking Behavior, Access to Alcohol, and the Influence of Deterrence Polices: Findings From the Harvard School of Public Health College Alcohol Study. *Journal of American College Health* 50(5): 223-236.

problems, their lifestyles, and demographic and background characteristics. The authors defined *underage students* as those under the age of 21, and for comparison purposes, they defined the *legal age* or *of-age* students as those in the 21 to 23 year age group.

When the two groups were compared, underage students were less likely to drink any alcohol in the past year or engage in binge drinking in the past 2 weeks. However, among students who did drink during the past year, underage students differed from their 21-23 year old peers in their experience of problems related to alcohol use. The underage students were more likely to do something they regretted, forget where they were or what they did, cause property damage, get into trouble with the police and to get hurt or injured. On the other hand, underage students were less likely to drive after consuming any alcohol.

Off-campus parties and off-campus bars were the locations where students were most likely to report drinking and heavy drinking. Over half (50.9%) of the underage students reported that alcohol was "very easy" to obtain, and most underage students (71.6%) reported that they obtained their alcohol from another student who was of legal drinking age. Obtaining alcohol from another student under the age of 21 was the second most frequent source of supply among underage students (42.2%). Interestingly, relatively few underage students (20.9%) reported that they obtained alcohol by themselves without using an ID or by using a false ID (17.8%) or from a stranger of legal drinking age (6.9%).

In terms of enforcement, fewer students reported receiving a warning in 2001 compared to the 1993 survey results, but the authors did observe significant increases in fines, mandatory attendance at alcohol education classes, community service, and other disciplinary actions. In addition, the authors looked at composite measures of underage drinking laws and laws that pertain to high-volume drinking. They found that the presence of 4 or more of 7 selected underage drinking laws (attempt to purchase, consume, Fake ID, minimum age 21 to sell statewide, minimum age 21 to sell locally, minimum age 21 to be clerk, and posting of warning signs) is

associated with less drinking among underage students. When the researchers examined the laws related to volume of sales and alcohol consumption (restrict beer sold in pitchers, keg registration, restrictions on happy hours, billboard and ad restrictions, .08 BAC is illegal and open container laws), they found that colleges under the jurisdiction of 4 or more of these laws had significantly less underage binge drinking. The researchers conclude that they "found strong indications that laws regarding the minimum legal drinking age may, indeed, limit the underage students' drinking behaviors".

While this study is not able to indisputably conclude that aggressive alcohol law enforcement will result in a reduction in alcohol-related problems, the study does provide encouragement that we are on the right track. As the researchers state, "enacting and enforcing alcohol-control policies on a state or local level are promising prevention strategies for reducing underage drinking". This study is an important piece of the puzzle in providing support and evidence of the importance of alcohol law enforcement in reducing alcohol-related problems in our communities. If you would like a copy of the study, you may download it from the Harvard School of Public Health's website at <http://www.hsph.harvard.edu/cas/> or you may contact Rebecca Ramirez from PIRE at 301-755-2761 or rramirez@pire.org.

Perspectives

In this issue of the NLLEAGRAM, we asked Bill Patterson to comment on his recent experiences working with local communities on alcohol-related problems. Mr. Patterson recently retired as the Deputy Director of the North Carolina Alcohol Law Enforcement Division after 27 years of service. In his new role as a Senior Program Manager for the Center for Enforcing Underage Drinking Laws, he has been traveling the country providing trainings and technical assistance to local communities regarding the enforcement of underage drinking laws. His comments on the next page reveal his perspective on the future of alcohol law enforcement at both the state and local levels.

NHTSA Corner

By Jim Wright

In the last issue of *NLLEAGRAM*, the NHTSA Corner focused on our efforts to support a comprehensive criminal justice approach to underage drinking. In this issue we will discuss the resources that NHTSA can make available to address the broader issues, including prevention efforts, regarding underage drinking.

One of our most popular publications is the *Community How-To Guides On Underage Drinking Prevention* (publication number DOT HS 809 209). This ten-booklet package contains everything you need to know (and quite possibly were afraid to ask) about maintaining a comprehensive community initiative. It contains separate booklets on coalition building, strategic planning, evaluation, prevention, enforcement, public policy, media relations, self-sufficiency, resources and a case study. This was developed in partnership with the National Association of Governors' Highway Safety Representatives (NAGHSR), who also is providing training for states in putting together "rapid response teams." These teams would assist communities that are ready to implement a comprehensive approach. (For more information on the NAGHSR training, contact Pam Beer at pmbeer@worldnet.att.net.)

We are also working with Students Against Destructive Decisions (SADD) on the "Think About It" Campaign. This project will provide SADD chapters across the country with kits containing promotional materials and action guides to support student prevention activity during four times of the year. Kits are now being developed to concentrate on activity during the summer months. If you want student support for your enforcement or prevention efforts during the summer, contact the SADD national office (508-481-3568) and have them send "Think About It" kits to your local SADD high school chapters.

Finally, prom and graduation time is upon us - a time of celebration and, unfortunately, increased underage partying and drinking. NHTSA, along with our partners in the National Organizations for Youth Safety (NOYS), has developed materials for young people to help them celebrate safely and plan prevention activities. *Make Your Parties ROCK Substance Free - A Guide to Safe and Sober Event Planning* is available for youth groups and schools. A number of products under the heading *Speak Out and Make NOYS* is now available to assist young people in project action planning, including a project organizer, videotape and poster. NOYS is a collaboration of over forty youth-serving national organizations that assembles quarterly under the sponsorship of NHTSA.

We would be happy to assist any NLLEA member who wants to get these products to their community and work the prevention side of the equation.

Linking with Local Law Enforcement

By Bill Patterson

With state budgets shrinking, many drastically for various reasons, it becomes even more important to look at ways that state alcohol enforcement agencies can maximize resources. The hard cold reality is that we are not going to see our budgets increase anytime soon and the old story, "Sorry, we just can't afford to give you any more people", well, we've heard that one for years. We are used to the shortage of people problem. What is more difficult in my mind are the cuts to our operating budgets. That equates to less money for vehicle purchases, fuel, repairs, travel, training, undercover operations, and the list goes on and on. With no new personnel increases and deep budget cuts, now, more than ever, partnering with other law enforcement agencies to help with what we do just makes sense.

One way is to support local law enforcement efforts in alcohol enforcement. On my travels around the country, I see a hunger for more training and information about alcohol enforcement from local and state law enforcement agencies. Here is an opportunity to partner with those officers who are out there 24/7. They can be our eyes and ears for problem licensees, and the adults who are supplying alcohol to our youth. I encourage our membership agencies to make ourselves and our personnel available by phone, pager, radio or proxy dispatcher to those that can use our expertise.

We are the experts in alcohol enforcement. If we are to remain the experts, then let us train officers in local agencies to work with us to make a positive difference in our communities. But if we train them, then we have to make sure that our expertise is available when they need us. It might be only a phone call to consult about a problem or it might be an on-site response to a problem. A response in a timely manner from our end will go a long way toward building positive relationships with other law enforcement agencies.

I also challenge you to look outside of the law enforcement community and build partnerships with other stakeholders to work on alcohol related issues.

Whether it is underage drinking, over service of alcohol, or nuisance locations, there are other agencies that can help such as the fire department, health department, building inspection, code enforcement, OSHA, tax division, etc. They all have a stake in what we do. By partnering with law enforcement, other agencies, and community groups, it becomes a win-win situation for all that will make a measurable difference in what we do to make our communities healthier and safer.

On The Legal Side

"When is a Minor a Minor for the Purpose of Underage Possession?"

By Aidan Moore

The question for the Iowa Supreme Court in the case of State v. Campbell (2001)ⁱ was whether an underage person, age 19 and chargeable as a minor in possession of alcohol under section § 123.3(19) of the Iowa Code, was entitled to the protections of § 123.47(2) of the Code because as a person over age 18 she was no longer considered a minor, but her own guardian. As her own guardian, is she now eligible to claim the protection of the statute which exempts a minor who drinks at home under the supervision of a guardian?

GENERAL FACTS OF THE CASE

The defendant, Carissa Campbell, was charged with underage possession of alcohol after police officers found her drinking beer in an apartment with several other individuals. See Iowa Code § 123.47(2) (1999). Iowa Code section 123.47(2) provides that "[a] person or persons under legal age shall not . . . individually or jointly have . . . beer in their possession or control . . ." "Legal age" is defined in Iowa's Alcoholic Beverage Control Act as "twenty-one years of age or more." Iowa Code § 123.3(19). The defendant was nineteen years old at the time of the alleged offense. Thus, although she was no longer a minor under the law, see id. § 599.1 (stating that "[t]he period of minority extends to the age of eighteen years"), she was not of "legal age" under chapter 123.

Despite the fact that the defendant was an underage person and had beer in her possession, the district court dismissed the charge on the basis of a statutory exemption for "beer given or dispensed to a person under legal age within a private home and with the knowledge, presence, and consent of the parent or guardian." Id. § 123.47(2). The court held that the defendant, "[h]aving attained the age of majority," Carissa was her own guardian. Accordingly, concluded the court, section 123.47(2) did not prohibit the defendant from drinking alcoholic beverages inside a private home. The district court granted the defendant's motion to dismiss, holding that she was exempt from the prohibitions of the statute because she was an adult.

The Court's analysis of the case began with a review of the statute and to give effect to legislative intent. The Court determined legislative intent by examining the words chosen by the legislature. At issue in this case is the meaning of the term "guardian" as used in the statutory exemption. "When the legislature has not defined a term and it does not have a particular meaning in law, we give the term its ordinary meaning." See State v. McCoy, 618 N.W.2d 324, 325 (Iowa 2000).

The Court found the Iowa legislature did not provide a definition of the word "guardian" as used in chapter 123, but nonetheless, found this term does appear to have a particular meaning in law.ⁱⁱ Additionally the Court looked at dictionary definitions in their effort to reconcile the language of the statute and the legislative intent of the Iowa provision. The Court found the statutes and the dictionary definition to have a common theme in definitions: They consistently contemplate a relationship between two people with one person having the authority or responsibility to care for the other. In addition, the statutory and legal definitions of the term "guardian" anticipate the involvement of the court in appointing a person to that capacity.

The Court held the underlying premise of the prohibition on underage drinking is that a person under the age of twenty-one is not mature enough to drink responsibly. See generally State v. Garman, 250 Iowa 166, 168, 93 N.W.2d 105, 106 (1958) (stating that the purpose of the statutory prohibition against the sale of alcoholic beverages to

minors-at that time, persons under the age of twenty-one-was "to prohibit the sale of beer to all persons of immature age"); Iowa Code § 123.1 (stating that chapter 123 was enacted "for the protection of the welfare, health, peace, morals, and safety of the people of the state"). Quoting from previous cases the Court restated the rationale behind the Iowa beverage alcohol laws.ⁱⁱⁱ

The Court acknowledged and affirmed with the underlying premise of the statutory prohibition against underage drinking, "...the legislature ... provided for a narrow exception when another responsible individual-a parent or guardian-has consented to the underage person's consumption of alcohol and is present to supervise that person's drinking. It would be contrary to the legislative scheme to interpret the exemption as allowing the underage person to decide for himself or herself whether, what and how much to drink. The fact that this underage person may be an adult under chapter 599 is of no import. The legislature is free to prohibit or otherwise limit drinking by persons who are eighteen, nineteen, and twenty. See U.S. Const. amend. 21; Wisconsin v. Constantineau, 400 U.S. 433, 436, 91 S. Ct. 507, 509, 27 L. Ed. 2d 515, 518 (1971) (stating that the states' police power over intoxicating liquors is "extremely broad").

The Court rejected the defendant's argument that the defendant was an adult and therefore not subject to the control of her parents or a guardian or that

she could not be governed by a rule requiring parental or guardian consent to drinking in a private residence. "The legislature has the power to set the age for alcohol consumption differently than the age of majority. Thus, although for other purposes the defendant may not have been subject to parental control, for purposes of drinking alcoholic beverages, she was required to obtain the knowing consent and presence of one of her parents or a court-appointed guardian." Campbell

SUMMARY COMMENTS

The Iowa Supreme Court found the district court erred in ruling that an adult under the legal age of twenty-one could act as his or her own guardian for purposes of the statutory exemption allowing consumption of alcohol in private residences and remanded the case to the district court for reinstatement of the charges. Liquor Enforcement officers and supervisors should take stock of the laws and exemptions in their states and consider the arguments raised above if, and when, their statutes are challenged.

ⁱ<http://www.judicial.state.ia.us/supreme/opinions/20010906/00-1109.asp>

ⁱⁱIowa Code chapter 600A addresses the termination of parental rights and contains a definition of the word "guardian." Section 600A.2 defines "guardian" as a *person* who is not the parent of a minor child, but who has been *appointed by a court* or juvenile court having jurisdiction over the minor child to make important decisions which have permanent effect on the life and development of that child and to promote the general welfare of that child. Iowa Code § 600A.2 (emphasis added); *accord id.* § 232.2(21) (defining "guardian" as "a person . . . who has been appointed by a court . . . to make important decisions which have a permanent effect on the life and development of [a] child and to promote the general welfare of that child").

ⁱⁱⁱThe statute should be liberally construed to accomplish the obvious objective of protecting persons under the legal age from the troublesome consequences of alcohol consumption. See *De More v. Dieters*, 334 N.W.2d 734, 737 (Iowa 1983) (construing section 123.47 liberally to accomplish the statutory objective of protecting underage persons "from the evils of alcohol"); Iowa Code § 123.1 (stating that the statute "shall be liberally construed for the accomplishment of [the statutory] purpose").