

2010

Alcohol Compliance Checks Guide for Law Enforcement



**Recommended
Practices for Alcohol
Compliance Checks**
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PREFACE

The consumption of alcohol by our youth has reached a critical mass level. Overall, alcohol affects our families and communities. Alcohol claims more lives than any other drug combined. It is the leading cause of traffic accidents, fatalities, crime, suicides, and sexually transmitted diseases and below average grades and athletic ability.

Communities across the United States have mobilized efforts to reduce the tragedies surrounding underage drinking and the consequences there of; in the areas of treatment, enforcement and education. With that in mind, no single approach can solve the problem facing our communities. Each effort must be implemented and enforced consistently and fairly. Research reflects that effective and regular alcohol compliance checks (A.C.C.) will decrease sales to minors, decreases traffic accidents, decreases health problems and helps build awareness to the dangers of underage drinking.

Some approaches have focused on educating young people about the dangers of drinking and equipping them with the knowledge and skills to make responsible choices. Other approaches have tried to strengthen the relationships young people have with family, peers, teachers and others. Still others have focused on the array of adult institutions that manufacture, distribute, sell, provide, promote, and regulate alcohol.

This manual is designed for law enforcement officers and their partners for developing and implementing a consistent compliance check system for establishments across the state that sell or serve alcohol. Research indicates that while many alcohol establishments refuse sales to underage buyers there are still a number of establishments who continue to sell to those under the age of 21.

In 2006 the Sober Truth on Preventing Underage Drinking (STOP) Act was passed by a unanimous vote in the Senate and House. This was one of many indications that underage drinking is a priority at national, state, and community levels. Even the Surgeon General stated in his "Call to Action" that our children are our priority.

This guide provides an outline on how to conduct alcohol compliance checks consistently across the state, how to select youth to participate in your program and how to document violations.

WHY ENFORCE LIQUOR LAWS?

THEY SAVE LIVES!!!

If you want to change the social norms in your community regarding the acceptance and use of alcohol by minors and adults, you will find that regular and consistent alcohol compliance checks will decrease the sale to youth and improve public awareness of the issue. Crimes by youth are usually committed while under the influence of alcohol and other illegal substances.

More and more teens are drinking at younger ages. Research shows age 11 for boys, and age 13 for girls. Youth that begin drinking prior to age 15 are 40% more likely to become alcoholics. When the United States rose the drinking age to 21, a decrease of alcohol related problems was observed and research showed the number of youth that started drinking in their later years drank less and less often.

Let's face it; the views of the public often influence what laws our law enforcement leaders put more emphasis on. The views of the Officer can also severely affect what and how laws are enforced. Statistically, most Officers believe that underage drinking is a problem in their community and that they do not have sufficient resources to deal with the issue. Most say their own supervisors do not believe underage drinking is a "high priority".

It is up to the department's Chief or Sheriff to ensure local laws (all laws) are being enforced and should regularly meet with members of the community and media. These meetings will help foster and influence change, help develop attitudes and beliefs that underage drinking is unhealthy, illegal and unacceptable. This also sends a clear message that incidents regarding alcohol including DWI/DUI are not tolerable.

Community leaders should assess the underage drinking problem in their communities and consider effective approaches— such as community organizing, coalition building, as well as the strategic use of the mass media—to reduce drinking among underage youth.

DOES MY AGENCY HAVE THE AUTHORITY TO CONDUCT ALCOHOL CHECKS?

Every state has a statute governing what agency has the authority to do so. Having a license to sell alcohol is considered a privilege and those businesses are subject to licensing laws and inspections.

WHY ALCOHOL COMPLIANCE CHECKS?

If done correctly, this inexpensive and effective tool can help reduce alcohol related incidents involving youth. Checks have been conducted nationwide and research shows that over 50% of the youth in any community could purchase alcohol without being asked for identification. Alcohol Compliance Checks are just one of many strategies law enforcement and communities can use to reduce youth access.

The problems that occur with underage drinking have been documented tirelessly. Over \$60 billion dollars is the estimated cost of alcohol use by youth. Over half of the students that attend college are victims of campus related crimes where either the victim or suspect had been under the influence at the time of the incident.

It has also been documented that the correlation to athletic performance and grade point averages decrease when the user consistently consumes alcohol. Knowing this, enforcing underage drinking laws can prevent alcohol related tragedies, reduce teen pregnancy and STD's as well as keeps kids safe. Among other crimes social problems such as assaults, noise complaints and sexual assaults can also be reduced.

If organized properly alcohol compliance checks are easy to do and inexpensive. Most officers would rather participate in an A.C.C. program, than have to respond to a traffic incident involving youth and alcohol. They also send a good message to the public that underage drinking is no longer accepted in the community.

Alcohol compliance check programs in retail outlets, media campaigns and license revocation can increase deterrence by using the following techniques:

1. Undertake regular and comprehensive alcohol compliance check programs, including notification of retailers concerning the program and follow-up communication to them about the outcome (sale/no sale) for their outlet.
2. Enforcement agencies should issue citations for violations of underage sales laws, and report them to the Department of Revenue, Liquor Control Division for administrative action and/or revocation.
3. Communities and states should implement media campaigns in conjunction with alcohol compliance check programs detailing the program, its purpose, and outcomes.

EVIDENCE THAT COMPLIANCE CHECKS WORK

Montana Case Study

December 2004 - June 2005

First wave of alcohol purchase attempts, businesses in compliance 45%
Law enforcement made immediate contact with businesses with results of the checks
Results of every check was sent to Department of Revenue and media
(At the time there was no standardized training for businesses)

July 2005 – June 2006

The Flathead County Multi-jurisdictional Underage Drinking Task Force is supported by EUDL Funding from the Office of Juvenile Justice Delinquency Prevention and Department of Justice; and funding issued through the Montana Board of Crime Control. Local support comes from the STOP Underage Drinking in the Flathead Coalition and Flathead DUI Task force.

Agencies Involved:

**Flathead County Sheriff's Office
Kalispell Police Department
Montana Highway Patrol
Columbia Falls Police Department**

**Fish, Wildlife and Parks
U.S. Forest Service
Whitefish Police Department**

Businesses noticed of forthcoming checks via education packets sent to businesses
Server training offered to businesses every month regardless of attendance
Notices sent to local governments and the community
Quarterly statistics reported at city/county meetings
Weekly media releases (newspaper, radio & television)
Lunch meetings with local fraternal organizations (Elks, Eagles, Lions Clubs, etc.)
Letters to the Editor of local papers sent quarterly regarding progress and tips for parents

The joint effort between six law enforcement agencies and local coalitions during the last twelve month increased compliance with the law over 70%, achieving a 30% reduction in illegal alcohol sales to youth. Checks were done once a month to over 200 businesses.

Clearly, alcohol compliance checks reduced the availability of alcohol to youth. The best available evidence suggests that at least one check, and ideally two checks, should be conducted annually.

Alcohol Compliance Check Program Overview

Programs should utilize youth who are **obviously** under the age of 21. A good standard to use is a teen that is between the ages of 18 & 20.

Once selected the youth, accompanied by an Officer, will attempt to select and purchase a known alcoholic brand of alcohol. If the youth is sold the alcohol, the seller (employee of establishment) is issued a citation. After which a copy of the report and citation should be filed with the Department of Revenue, Liquor Control Division for administrative action against the licensee.

BENEFITS OF PRIOR NOTICE TO COMMUNITY MEMBERS AND CITY/COUNTY COUNCILS

Announcements in local media (TV, radio, newspapers, posters on community bulletin boards, school papers, etc.) and presentations by officers to community groups can provide public notice of upcoming alcohol compliance checks and help change social norms regarding underage drinking.

Notifying the community of upcoming compliance checks is beneficial and provides notice that the laws are being enforced. This will also help build support within the community as many Citizens are concerned about alcohol use by its youth. News of the pending checks or recent checks will probably prompt business owners and possibly parents to call and complain that they are being singled out in their community. If your council can be informed a head of time and have education as to why these checks are important your agency can reduce a lot of unwanted and unwarranted complaints.

Having the notification in original print (i.e. Newspaper clippings, PSA's, etc) is a good resource to keep on hand, as it will address the date it was first brought to the forefront.

If business owners complain about upcoming alcohol compliance checks, council members can respond with:

- *“Didn’t you read the information on complying with liquor laws in the notice letter you received?”*
- *“Are you aware your business is working on the front lines to protect our community against drunk driving and identifying underage patrons in your establishment?”*

Credible sources can also help show that it is not just law enforcement that is affected by the issue. Sources can be local chemical dependence councilors, doctors, prevention groups as well as youth who are concerned about the issue.

Law enforcement officials will find that educating people involved with alcohol sales, giving prior notice of alcohol compliance checks, and following up with warning-only checks for the very 1st time checks are conducted can help to bring a majority of the businesses into voluntary compliance. (Thus, the small percentage of businesses that sell to youth after receiving notice and warning-only checks exhibit exceptional behavior, and prosecution may be easier.) This is confusing, not sure how to re-word it. Providing notice to businesses of upcoming compliance checks may create the perception among staff that enforcement will occur, which often serves as a deterrent to making an illegal sale. Judges and attorneys are more likely to take file compliant action especially if the business has been given warnings and education of the upcoming checks.

HOW TO INFORM BUSINESSES OF PENDING ALCOHOL COMPLIANCE CHECKS

Write a letter to all alcohol sales licensees who will be part of the alcohol compliance check operation indicating that compliance checks will be conducted in their area. (Attachment #1) Include in the letter recommendations for how the business can ensure compliance with the law. Recommend responsible alcohol sales and service (RASS) training for all servers/sellers as well as a review of their own policies, use of ID Scanners and posted signage. Businesses may contact the Department of Revenue, Liquor Control Division at (406) 444-4307 for information on the state's RASS class, *Let's Control It*.

If possible, keep a copy or record of all letters mailed to establishments. If time allows, have a uniformed officer present the store owner or manager the letter in person. This direct contact method cannot be replaced with any other powerful written message. This also gives the owner/manager with opportunity to ask questions about law related material.

If officers do not have the time to hand deliver a letter, consider sending the notification letters by "certified return receipt." This is a good way to ensure the businesses received notification and the receipts are easier to maintain as they take up less room and can be alphabetized.

Issues to consider and frequently asked questions:

UNDERAGE BUYERS

HOW DO I FIND YOUTH IN MY COMMUNITY?

This can be the most challenging part of an Alcohol Compliance Check program especially in small rural communities. Some communities offer youth programs such as MADD or SADD; you may also want to consider neighboring military bases for such recruitment. Military officials encourage their enlisted to participate in programs such as this. If you are a small community, try borrowing CI's and officers from neighboring jurisdictions. Other venues could be:

- Law Enforcement Academy Youth Programs
- Students taking Criminal Justice Courses at a local college
- Ads in newspapers
- Youth typically known by Police Officers who want to become officers later
- Children or relatives of personnel that work in your department
- Use youth from a neighboring Community

See attachment #2 for a sample marketing piece to recruit youth.

Paid versus Non-Paid Buyers

Paid buyers, often called "Confidential Informants or CI" may be covered by municipal insurance in the event of accident or injury. Some prosecutors consider paid buyers to be more credible in court. Paid buyers are seen as professional and are less susceptible to being characterized as anti-alcohol crusaders.

Recruiting non-paid buyers (CI's) may be difficult or time-consuming. Paid buyers are often more committed to being available for court/administrative hearings however, non-paid may be necessary due to lack of funds. Pay should not be related in any way to purchase attempt success or failure rates.

The typical rate of pay for such buyers in large cities is approximately \$8 to \$9 per hour. You may want to consider a flat rate regardless of the hours or establishments checked. Be sure to match buyer wages to prevailing wages in the local community. It is recommended not to work buyers more than 5 hours during each check.

Is it legal for Law Enforcement to use an underage person to buy alcohol?

YES. The United States Supreme Court has ruled that it is not entrapment.

HOW OLD SHOULD BUYERS BE?

They cannot appear older and they cannot misrepresent themselves with a false document or lie about their age. As previously stated, the best ages that are typically sought are between 18 and 20. Avoid using youth that are within 4-6 months of turning 21 to avoid confusion for the sales clerk and in case the buyer turns 21 prior to giving his/her testimony. In some cases someone who is 17 may be used, but get their parents approval in the form of a waiver or a ride along form as well as your agencies supervisor's approval first.

Depending on your communities "political climate" you may want to try age verification with your buyer by conducting a simple evaluation. On a separate form, take your buyer to a public area such as a mall or local event and ask people "How old do you think this person is?" By including a random analysis in the buyers employment file, you can show consistency in what the general public or "a reasonable person" believes the age to be.

For many judges and city councils, the only evidence needed of an illegal sale is proof of the buyer's age and that a sale was made. However, some business owners, sellers/servers, judges, and councilpersons believe that apparent age warrants consideration. They may argue that any reasonable person would have considered an older-appearing buyer to be age 21, regardless of actual age. You can also call the sellers and servers who refused to sell to the buyer as witnesses in administrative or criminal hearings.

CAN THE BUYER COERCSE THE SELLER?

No. Anytime the buyer lies about his/her age, presents false identification or engages in "Come On" or "Please..." type language, the transaction will be tainted and the buyer would then be in violation of Montana law 16-3-301(5) MCA. Buyers need to be truthful at all times. If the seller asks "Are you 21?" the buyer should answer truthfully.

YOUR BUYER'S LIFESTYLE "IN GENERAL".

All youth either male or female should have casual-type clothing that is age appropriate. Encourage female buyers not to wear makeup or anything else that would make them appear older and male buyers should have **no** facial hair. (See Attachment 10, as an example)

Some prosecutors prefer alcohol compliance checks to involve buyers who have NEVER purchased or possessed alcohol illegally, and who commit to not purchasing or possessing alcohol throughout the duration of the program. This would be a good rule of thumb to follow.

It's inevitable that eventually the buyer may have to testify in court or for the administrative hearing regarding the illegal sale. The buyer(s) should be briefed on this possibility prior to joining the program. Review the Confidential Informant Questionnaire (Attachment #3).

HOW MANY OFFICERS SHOULD PARTICIPATE IN THE CHECK?

Many departments conduct compliance checks with only one officer and one buyer. Ideally, two officers, one in plainclothes as an observer and a second outside in uniform, will participate in the compliance check. Having an officer witness the sales transaction can eliminate virtually all challenges of entrapment, as they are considered “Professional witnesses of the State”. The presence of an observing officer also simplifies the identification of the seller and immediately focuses attention away from the buyer and onto the officers. Some agencies use only plain clothes officers to conduct these checks. Whatever method used, credentials should be able to be easily displayed in case something unexpected happens. The overall concern should always be the safety of you and your buyer.

No incidents have been reported in Montana were buyers have been injured during operations. Let’s keep it that way!!

IS IT LEGAL TO VIDEO RECORD THE OPERATION?

Yes. And it is encouraged. Nothing else can prove or disprove the evidence more than a recording of the transaction. This can be done in several different and creative ways. The simplest is by having the buyer carry a digital recorder on his/her person. Upon returning to the law enforcement vehicle, debrief the buyer on the operation regarding the selection of alcohol and a description of the seller. An officer may want to video the transaction from a discrete location. Surveillance equipment can be purchased through “spy supply stores”. Button cameras, pens, and cell phones are now made for such purposes. Funding options could include a grant, community donation, or local coalition or task force. This evidence is great if the case goes to trial and could reduce the burden of the buyer to testify.

CAN MORE THAN ONE BUYER BE USED?

Each law enforcement agency’s policy will determine this. Some agencies feel that the operation could be tainted and could allow the seller to say “they were distracted” during the transaction. On the flip-side, most youth are present with other youth so it is not unreasonable to have buyers work together. Even if the compliance check operation involves making single purchase attempts at each site, it is helpful to have two buyers work together. Buyers are usually more comfortable when working with another person their age. It is highly recommended that only one buyer engage the seller in the transaction as to not confuse the seller. Whichever method you choose, be consistent in your operations.

CAUTION: When a single buyer enters with an older plainclothes police officer, waitpersons/bartenders may perceive the pair as a family unit. This parent effect may prompt sales that otherwise would not occur, so try to avoid the parent effect by not having the plain clothed officer enter at the same time as the CI.

WHAT IF THE SELLER WANTS TO SEE THE BUYER AFTER THE SALE?

If possible always avoid direct contact as tempers and emotions will typically be high. By using a color scanner, print a copy of the buyer's license and black out the name and address. This process should be a part of your operation.

The copy of the ID provides proof of actual age and allows the officer to educate the seller on where to look when deciding if the buyer is of legal age. It can also be helpful in court.

CAN THE BUYER PURCHASE OTHER ITEMS IN ADDITION TO THE ALCOHOLIC BEVERAGE?

Although it is common for patrons to purchase additional items during a transaction (i.e. Gum, potato chips, etc), it is not recommended during alcohol compliance checks. Some sellers would again say the transaction confused and distracted the clerk. Any attempt to distract the seller could be deemed to taint the operation, thus to promote fairness extra items should not be purchased. Although it is not the intent to mislead the seller, it should be avoided.

WHAT ABOUT THE TYPES OF ALCOHOLIC BEVERAGES TO PURCHASE?

Type and Quantity of Alcohol to Purchase (Cans vs. Bottle vs. Mixed Drink)

Consider youthful drinking practices to determine the type and quantity of alcohol to purchase in your compliance check operation. It is generally believed that there is a relationship between the volume of beer purchased and the danger that alcohol sale generates.

State of Minnesota Example:

The Minnesota Supreme Court in *Kavanli v. Village of Watson* 272 Minn 481, 139 N.W. 2d. 275 (1965) recognized that a minor buying 24 bottles of beer should be expected to share that illegally purchased alcohol with other minors. Hence, the purchase of larger volumes of alcohol suggests greater danger.

Beer is generally recognized as the drink of choice among young people. Typical young drinkers select common and less expensive brands of beer. When young people consume mixed drinks, sweet drinks are a common choice. The need to preserve illegally sold alcohol as evidence will influence the type of alcohol to purchase in an on-sale attempt. Bottled beer (with retrievable caps) is the easiest type of on-sale purchase to preserve. If you choose to purchase mixed drinks or glasses of beer, you may need additional supplies to successfully preserve the evidence.

Mixed drinks create an issue for evidentiary purposes. It is difficult to store and without tasting it, how can one testify to the type of alcoholic beverage. The alcohol will eventually evaporate making it easier to dispute in court.

The type of alcohol to be purchased should be arranged prior to the operation. Try to avoid twelve packs of alcohol. They are expensive and could be problematic in the realm of evidence collection. Go with the single can, six packs, or cheap liquor if possible. Try to stay away from off brands and “trendy” alcohol, as the seller may be unaware the brand is alcoholic. Commonly and commercialized alcoholic beverages should be purchased such as BUD or COORS LIGHT. These are known brand names and will not confuse the seller with non-alcoholic brands. Depending on your policy and prosecutors, you may need to keep it as evidence until trial.

FREQUENCY OF ALCOHOL COMPLIANCE CHECKS

The ideal compliance check campaign systematically checks all licensees in the jurisdiction. Successful operations have been conducted in a wave format in which all licensees are checked over a short period of time. Some communities have experienced long-term success in changing compliance rates by conducting waves of compliance checks twice annually, on an irregular schedule.

Other successful operations run on a routine periodic basis, in which a few businesses are checked every few weeks. This approach avoids periods when businesses can be reasonably certain no checks will be conducted. To successfully counter claims that you are unfairly targeting a particular business, establish a protocol defining which businesses will be checked during any particular operation. Ideally, every type of licensee should be checked, including restaurants and caterers. Your agency will need to decide which method works best for your organization. Whichever you choose, again, be consistent in your operations.

Obtain a list of liquor license holders throughout your jurisdiction to be checked. Some businesses might be approved to sell, but do not have it in stock yet. You can obtain those documents through your local distributor or the Department of Revenue, Liquor Control Division. Have a policy in place on how to re-check a business if they have sold to a buyer in the past.

Also, document additional complaints that a business is selling to minors as you may want to re-check the business if you feel the complaint is valid and not anonymous. Businesses will frequently attempt to have competitors checked to be malicious.

OPS PLAN (OPERATIONAL PLANNING)

PRE-OPERATION ACTIVITIES

Type of Compliance Check

Determine what type of compliance check operation fits your jurisdiction: administrative, criminal, or educational. Court decisions in your jurisdiction may limit how compliance checks may be conducted. Refer to the example checklist (attachment #4) in the back of the guide to help plan a successful compliance check operation.

Once you have made initial decisions and have identified sites (or regions) to be checked review the compliance check operation plan with prosecutors and licensing officials. Assemble packets for each date of the compliance check operation. Enlist the help of local coalitions or officers to take the pressure off the coordinator.

Establish your business list with specified region to check. Attach maps that show the location of each establishment and the order in which the purchase attempts should occur. Document the time of each purchase as well.

Prepare a work schedule for buyers and officers who will perform the compliance checks. Keep documentation on each check. A spreadsheet is perfect for maintaining all the information you want to keep. Be sure to print a hard copy periodically in case you cannot retrieve it from a computer and it makes it easier if your department head needs to review it. Ensure the buyer has completed a rider/wavier form if traveling in a government vehicle. (See Attachment #10)

Obtain and Document Cash

Obtain cash to be used in the purchase attempts. Keep accounting records of money spent at each establishment. Some department's document and track serial numbers of bills for evidence so they can get the money back prior to leaving the establishments. This may be an option when doing a high number of checks. Your court may be able to set up a fund from fines that could be used for "buy" money.

Obtain and Prepare Evidence Containers

Again check with your evidence technicians and or prosecutors for handling containers that will be used for prosecution. In most cases involving open containers (server provided an open beverage), it will be difficult to store and it may lose evidentiary value since the alcohol will eventually evaporate. It could also cause cross-contamination with other trial-type items. A sample could be refrigerated; however it will still deteriorate if stored for a long period of time.

Photographing the open container at the time has been appropriate for misdemeanor cases. (Attachment #5) If you do not have room in your evidence locker photograph and destroy the item; but always check with your prosecutor first.

Ordinance Review/Revision

Statutes are the primary source of law for age-of-sale enforcement. Local ordinances, however, may provide greater flexibility to law enforcement agencies. Some things to consider:

1. Review the current statute that is going to be enforced
2. Attach a copy of said statute to the packet and highlight the code violation
3. Attach a copy of a citation and verbiage to be used (i.e. *"Being an employee of _____, sold a can of _____, a known alcoholic beverage to a minor"*)
4. Review the possible fines and penalties for the violation and subsequent violation
5. Determine in advance the type of alcohol to be purchase

Businesses that face license suspension or revocation, and the potential of losing thousands of dollars in business, may make an aggressive defense against charges stemming from an illegal alcohol sale. A well-conducted compliance check leaves the defendant seller and business with only one possible defense: charging the officer or the buyer with entrapment. To counter this defense, officers should ensure that their reports are thorough and accurate. An aggressive defense attorney and inquisitive reporters can combine to subject the case to public review and legal scrutiny more typical of a major felony case. To avoid this, ensure your buyer is honest, trustworthy and has abided by the requirements of looking age appropriate, and that he/she has not provided the seller with identity information to make them believe the buyer is older.

AVOIDING THE PHONE TREE AFFECT – DELAY “BUY-BUST” CONTACT

Many businesses that are checked during a compliance operation will call neighboring businesses to warn them a compliance check is occurring and to provide a description of the buyer who is working with law enforcement. This behavior is often called telegraphing or the phone tree effect. Some departments use several buyers, alternating buyers from business to business to minimize the effect of such warnings.

Agencies have reported that telegraphing has become so great a problem that they have altered their compliance check procedures to avoid immediate post contact with the seller/business, known as the delayed “buy-bust.” These agencies conduct a purchase attempt at several establishments without any law enforcement contact with the sellers or the businesses. After all business selected for that wave of inspections have been checked officers return to complete enforcement or education activities.

Anecdotal evidence suggests that most licensees who have been warned that compliance checks are being done in the area are atypically careful for a short period following the warning. Communities with a large number of licensees typically schedule waves (buy nights) several

weeks apart. Their objective is a fair test of the businesses typical level of compliance, not to test the level of compliance stemming from a warning that a check is imminent.

A delayed post “buy-bust” contact procedure can complicate evidence preservation at on-sale establishments. Typically, the buyers have to preserve and remove the evidence. Usually the buyer (ideally a buy team of two) will pour a sample from the bottle or glass into an evidence bottle and carry it to the squad car in his or her pocket. The food must be paid for. With immediate post-buy procedures, the officer typically interrupts the food order. It is canceled or ignored and establishments seldom expect payment. With delayed post-buy contact the buy teams either wait for delivery of ordered food and eat, or must leave early placing an adequate amount of cash at the table to cover the bill.

Some agencies return to the site on the same evening; others return on a subsequent night. Store clerks, bartenders, and waitpersons tend to have varying schedules and some difficulty has been experienced in making contact with the seller to issue a summons, requiring several visits to the site. It will be more difficult to obtain the buy money as evidence, as by the time the officer returns several hours after the sale it may have been given out as change or will be co-mingled with other receipts.

When delayed, the post “buy-bust” contact requires more extensive reports to be made to insure accurate identification of the seller upon the return visit for summons or congratulations. An observing officer is essential to facilitate identification of the seller. Agencies should be aware that the “phone tree” could negate the validity of checks conducted at businesses warned that a check is imminent. The more complex the delayed post buy-bust contact procedure is, it may be necessary to effectively determine if a business routinely verifies age before making sales of alcohol.

Agencies that encounter a business community that consistently use the “phone tree” and where buyers are easily accessible may benefit from checking only one business in the community every few weeks. The “phone tree” between businesses will have the effect of enhancing overall compliance, and an accurate measure of compliance may be obtainable.

If your agency chooses the delayed buy bust method just be sure to take the above listed concerns into consideration.

CONDUCTING ALCOHOL COMPLIANCE CHECKS – Post Operation Activity

Submit Reports

The coordinator of the program or lead officer of the operations should ensure that citations and reports are forwarded to the Department of Revenue, Liquor Control Division for administrative action. (See Attachment #11)

Communication with Businesses

A letter of success and failure to businesses help keep the owner/manager of employee's informed of the outcome of the alcohol compliance checks. (Attachments #6 &7)

- Licensees get positive feedback about the efforts they took to ensure staff was compliant with the laws.
- Licensees will be prompted to re-think the importance of compliance. The letter could include data on the overall outcome of the alcohol compliance check operation and information about the consequences for those who failed the compliance check. The letter should recommend obtaining RASS training for their employees.
- Licensees will be prompted to communicate with their staff the importance of compliance when selling and serving.
- Continuing business education after the enforcement operation will be powerful evidence to counter claims that law enforcement is "out to get businesses."
- A second letter directed to the individual seller, but mailed to the owner or manager, will prompt management to positively reinforce the seller's good behavior.
- Some organizations could provide letters or certificates suitable for the establishment to frame.

Communication with the Community

News releases (attachment #8) on the compliance check operation, which includes data on the negative consequences of alcohol access by minors, can further influence community attitudes toward underage access to alcohol. Most departments issue a press release soon after the first wave of compliance checks is complete, citing successes and failures and the number of reports sent to the prosecutor for charges.

Other departments elect to use criminal conviction or administrative hearing results as the lead for the news release, avoiding pre-trial/hearing publicity. Ideally, news releases should be issued both after the first wave of compliance checks and after conviction(s). News releases contribute significantly to the effect of your operation in the following ways:

- They send powerful messages to the community that the chief executive of their law enforcement agency considers providing alcohol to underage persons serious issue
- They provide an opportunity to educate the entire community on the negative consequences of alcohol use by youth (e.g., crime, teen pregnancy, educational problems, auto crashes, etc.)
- They let community residents know that their law enforcement agency is proactive in trying to help keep their kids safe.
- They send messages to businesses and individuals working as alcohol servers or sellers, that law enforcement is paying attention to their level of compliance with alcohol sales laws.

Media may learn of the compliance check operation and demand business identity and sales information even if a press release is not issued. Departments that are planning to use press releases or that anticipate demands for information from the press on the identity of businesses that fail the compliance checks may wish to explain in the pre-check notices to businesses that public identification of sellers may occur.

Activate community groups that have an interest in alcohol and youth issues. Contact the local MADD/SADD chapters, neighborhood councils, groups serving teens, block clubs, prevention committees or others who will support efforts to restrict teen access to alcohol. These groups can provide important political support.

If merchants exert political pressure in an effort to prevent compliance checks these groups will often want to serve as a counter-balance. Groups organized around public health and safety will want to reassure elected officials that important electoral constituencies want compliance checks. These groups also serve as an excellent source of volunteer help and often can assist law enforcement agencies in obtaining funding.

EDUCATE AND INFORM PROSECTORS AND JUDGES

Educating the public officials who will hear cases is extremely important. Alcohol plays an important role in American culture. Many people, including participants in the criminal justice system, may remember participating in underage drinking. Credible research has been done suggesting that one drink per day may even improve health for some, particularly middle-aged and older males at risk for cardiovascular disease. Unfortunately, this potential benefit is far outweighed by the large number of people for whom alcohol may be life-threatening.

The prosecutors of alcohol offenses and the presenters at administrative sanction hearings need to recognize and respect the social acceptability of alcohol. Judges, juries, and elected officials who hear administrative cases, and even some law enforcement officers, often have conflicting views on the seriousness of underage alcohol consumption. Acknowledging the legitimacy of the responsible use of alcohol in moderation by many adults may help alleviate some of these conflicting outlooks. Assess the track record or attitudes of the local court or council and consider including an educational effort in early prosecutions/administrative hearings. A well-crafted and brief presentation by a local expert on the consequences of youth access to alcohol can exert a powerful influence on these decision-makers. You don't want to appear as if you are presenting a case that you are anti-alcohol but one that says you are against illegal underage consumption. But, at the same time support the responsible consumption by of age persons.

OTHER CONSIDERATIONS

Departments that bypass an educational wave of checks and bring criminal cases on the first wave may benefit from postponing the decision to charge until after all checks have been completed. The charging recommendation by the law enforcement agency head may be influenced by an analysis of sales rates, a review of the evidence gathered, and interaction with the community. Some departments have experienced exceptionally high sales rates that undermine the strength of a criminal case. Two identified factors that contribute to unusually high sales rates are a buyer whose apparent age is consistently judged by sellers to be over 21, and a community-wide norm of the acceptance of alcohol use by youth . These problems are more likely to arise where no pre-buy age assessment was conducted and where little or no pre-operation community education occurred.

Another thing you might want to consider in your community is the passage of supporting city ordinances that may help your efforts. Social Host ordinances can be one tool that may assist you in your efforts to combat underage drinking. This concept is slowly spreading across the state. Many cities have already passed similar ordinances.

CONCLUSION

Fewer crimes will occur when youth drink less. Overwhelming evidence indicates that alcohol does not belong in the hands of our youth; underage drinking harms our communities, our families, and our children. Compliance checks are a powerful and positive tool for law enforcement to use in restricting youth access to alcohol, because they hold **ADULT SUPPLIERS**, as well as the **YOUNG CONSUMERS**, accountable for the problem.

Compliance checks are also effective community policing tools. Law enforcement agencies can significantly reduce the illegal sales of alcohol to underage persons by conducting cost-effective compliance check operations. Pre-planning and interaction with the community enhance community support and improve outcomes at trials and administrative hearings. Careful selection of underage buyers helps avoid conflict over their apparent age.

Publicity and officer interactions with servers, clerks, and business people can influence community norms on tolerance of youth drinking alcohol. Compliance checks are an important weapon in law enforcement's arsenal and may be an effective method for reducing alcohol-related crime and public health problems.

**Business Notification Letter
(Attachment #1)**

Date

Business Name

Address

City, State, Zip

Dear Business Owner:

The (enter agency name) will be conducting alcohol compliance checks to enforce liquor sales laws in (City). We believe that helping you to avoid law violations, such as selling alcohol to underage people, will help us to avoid the problems that come with underage drinking. It is less expensive and easier to prevent youth access to alcohol than to investigate the motor vehicle crashes, fights, and other crime that underage drinking promotes. Nearly half of injury motor vehicle crashes involve drivers who had been drinking alcohol. Communities that have reduced the availability of alcohol to underage drinkers have experienced fewer crashes and fewer crimes.

(Replace following sentence with your own local statistics)

Over (300) purchase attempts were conducted in _____ County since 2005. Youthful-appearing buyers were sold alcohol without being checked for ID approximately 50% of the time. This evidence suggests that a serious problem exists.

Underage young adults will come into your business during the next few months to try and buy alcoholic beverages. Police officers/sheriff deputies will be working with these youths. Staff caught selling alcohol to underage buyers will be issued a citation and referred for prosecution.

Businesses where sales to underage buyers occur will be referred to the Department of Revenue, Liquor Control Division for administrative action. Under state law reports on alcohol compliance check operations become public data and therefore the identity of businesses checked and the outcome of each check can be obtained and published by the news media. We want your staff to refuse alcohol sales to our underage buyers.

Sincerely,

Sheriff,
Chief of Police
City/County Attorney

Marketing Piece
(Attachment #2)

Are you age 18 or 20 and look your age?
Are you considering a career in law enforcement?

The _____ Law Enforcement Agency needs civilians (volunteers) to participate in a liquor law enforcement compliance check operation as underage buyers.

Alcohol products in the hands of underage youth pose a serious threat to the public safety and public health of our community. The (enter agency name) is committed to upholding Montana law and local ordinances that appropriately prohibit youth access to these products. We want your help in this important law enforcement effort. If you are considering a career in law enforcement, want to play a role in promoting public safety and public health in your community, or just want to help law enforcement with crime prevention, consider becoming a “buyer” for our compliance check operation.

WHAT YOU WILL DO:

You will enter businesses licensed to sell alcohol — convenience stores, bars, restaurants, etc. — to try to purchase alcohol. Law enforcement officers will work with you. If an illegal sale occurs, the individual who sells to you and/or the business that person represents may be brought into criminal court or an administrative hearing. You may be needed to testify at any trials or hearings to explain what you did and said during the compliance check. Participating in compliance check operations will give you a unique opportunity to experience law enforcement work. We check approximately (**NUMBER #**) of businesses in our jurisdiction to insure that they are complying with the law. Buyers will need to be available to make court or hearing appearances for up to six months after the last compliance check.

IF YOU ARE INTERESTED:

Call (enter name) at (enter *phone#*) to set up an interview time. Those who are not selected are usually screened out because they look too old or too young. Selected applicants will then be trained. Scheduling for the actual compliance checks will be done during the training process.

CONFIDENTIAL INFORMANT QUESTIONNAIRE

(Attachment #3)

I, _____, the undersigned, understand that while I am assisting the Special Investigations/Alcohol Enforcement Team with a special operation, I will be bound to the conditions included below. I further signify, by initialing each condition, that it has been fully explained to me and that I understand each condition in its entirety.

_____ I understand that cooperating with the AET does not give me the authority to violate any local, state or federal laws.

_____ I understand that, should I violate any local, state or federal law, I will receive no special treatment or consideration by virtue of assisting the AET.

_____ I understand that I am NOT a Law Enforcement Officer, and will not attempt to represent myself as one.

_____ I understand that I am not to effect any physical arrests for any violations of the law as part of my services to this agency.

_____ I understand that I am specifically NOT AUTHORIZED to carry or use any firearm, other weapon, or item of contraband.

_____ I understand that I am not to carry any documents or equipment that could represent Law Enforcement field.

_____ I will not disclose to ANYONE that I am providing a service to this agency, except in answer to a subpoena in a Court of Law.

_____ I understand that I may never become involved in any activity that would constitute entrapment, which is “the inducement or encouragement” of an individual to engage in illegal activity in which he/she would otherwise not be disposed to engage.

_____ I understand that I may never use my sex, sexuality or sexual activity to induce or persuade an individual to sell or deliver a controlled substance, dangerous drug or any other substance purported to be the same.

_____ I understand that I am not to use my services with this agency to resolve personal matters.

_____ I understand that I am not to participate in any investigations of any criminal activity unless the investigation is being DIRECTLY SUPERVISED by an AET member. I agree to follow the instructions of the supervising AET member while assisting in such investigations.

_____ I am fully aware that I may have to testify in future court proceedings concerning investigations in which I might participate.

_____ I am agreeing to cooperate with the AET of my own free will and accord, and not as a result of any intimidation or threat.

_____ In agreeing to cooperate with the AET, I understand that NO Law Enforcement Officer may make any explicit or implicit promises or predictions regarding the likely disposition of any criminal proceedings that may be pending against me.

I CERTIFY THAT ALL OF THE ABOVE CONDITIONS HAVE BEEN EXPLAINED TO ME, AND THAT I FULLY UNDERSTAND AND WILL ADHERE TO THEM.

Confidential Informant

Date Time

Witnessed by: _____

Date Time

Location

Device Authorization Form

I, _____ do hereby give my authorization and consent for the A.E.T. to provide me with and wear a wiring device and/or camera to record my interaction with those I may come in contact with during an A.E.T. investigation.

I further give my authorization and consent to the A.E.T. to monitor and record all transmissions and/or conversations to which I am a party.

My authorization and consent is given freely and voluntarily without coercion, duress, threats or promises of any kind, for the purpose of obtaining evidence of criminal acts and/or conspiracies of criminal acts and covers the period of:

_____ to _____

Dated this _____ day of _____ 20__ ; Time _____

Confidential Informant

Witness

Buyer Information Form

Control/handler A.E.T. Member:	CI#:
Referral Agency:	Officer:

CONFIDENTIAL CONTRIBUTOR INFORMATION

True Name:					
Race:	Sex:	HEIGHT:	WEIGHT:	HAIR:	EYE:
D.O.B.	SNN:	DRIVER'S LIC. #:			
PLACE OF BIRTH:					

FINGERPRINTED:	YES	NO	WHERE:	DATE:
PHOTOGRAPHED:	YES	NO	WHERE:	DATE:

HOME ADDRESS:	HOME PHONE:	CELL:
OCCUPATION:		
BUSINESS ADDRESS:	WORK PHONE:	
VEHICLE:	YEAR/MAKE:	MODEL:
	LICENSE PLATE:	REG. OWNER

IN CASE OF EMERGENCY CONTACT:	
ADDRESS:	PHONE:
RELATIONSHIP:	

ALCOHOL COMPLIANCE CHECK CHECKLIST
(Attachment #4)

Follow the suggested steps below to implement the compliance check purchase attempt:

1. **Photograph** the buyer. Do this every time you conduct checks and keep a personnel folder on each buyer. Write the date, time and case report number on their photo. Your buyer may be called to court and will need to show documentation of what they looked like the day of the check. (Attachment #13) Be sure to fill out a Buyer Information Form (attachment #15) to keep in the file. Your buyer should also sign a Device Authorization Form (attachment #14) and a Release of Liability Form (attachment #16)

2. **Search** the buyer to document that he/she is not carrying extra cash and/or fake/altered identification. If they have other personal items, provide them with a locker or have them place those items in their vehicle. There is some question as to whether a buyer should use their own ID during the operation. This guide recommends that the buyer use their ID. This will prevent the seller from claiming any entrapment or confusion issues. Additionally, one of the objects of conducting alcohol compliance checks is to educate servers/sellers on checking ID's. This can help to facilitate this point.

3. Briefly **review** places to be checked and buyer's responses to possible questions by a seller. This will also ensure they won't go to places where they know people as it could taint the sale. Give the buyer the option of walking away if he/she recognizes someone. You can always do the check later with a different buyer.

4. Distribute buy money to the buyer and document bills for each check.

5. **Plainclothes officer enters** establishment; exits if conditions are inappropriate for check. (Use of a plainclothes officer inside the establishment is optional but **strongly** recommended; small agencies may need to swap officers with neighboring agencies to avoid recognition of the officer by the sellers).

6. **Buyer enters** after the plain clothed officer and **selects** the predetermined type of alcohol product (off-sale premises) or places order for a bottle of beer (on-sale premises).

7. Buyer and plainclothes officer **witness** seller/server's refusal or sale. Buyer does not consume any alcohol!

8. If using two buyers, **second buyer enters** and makes a second purchase attempt, from a different employee if possible (confrontation of the sellers should occur after the last buy attempt in the establishment). Once buy is complete, buyer should exit the business before officer approaches seller.

9. IMMEDIATE (Buy – Bust) CONTACT PROCEDURE: Plainclothes **officer approaches server/seller**, explains check, and signals for uniformed or other officer by radio/phone to enter the site.

DELAYED (Buy – Bust) POST-BUY CONTACT PROCEDURE: Officer exits site and fully documents sale with sufficient detail to ensure identification of the individual seller when contact is made at a later time.

AT THE TIME OF CONTACT:

10. **Officer:** Introductions are made and Officer identifies self and assignment and Seller/server identified.

- A. Success (no-sale). Issues congratulations (immediately **provides positive feedback**) and identifies seller as a possible witness of apparent age.
- B. Failure (sale). Issues warning, summons/citation or notice of intent to refer the case for charges.

11. **Viewing** of buyer's photograph ID upon owner/manager request. This is always a good idea to establish good rapport with owner/manager. If possible provide a computer scanned copy and black out buyers name and address. A photocopy would also suffice.

12. **Officer** processes and collects evidence and above all monitors buyer(s) to insure their safety.

13. **Officer and Buyer** debrief in vehicle to ensure what was said and observed, which will be documented in officer's report. If using a recorder, buyer should describe the purchase and officer note date, time and case report as well as location.

14. **Process repeated** at next assigned target business.

15. At the end of the shift **complete all reports** and **log in evidence** (attachment #17)

16. **Forward Report** to appropriate authority in your jurisdiction for criminal charges. A copy of the citation and police report should be forwarded to your Department of Revenue, Liquor Control Division or Alcohol Beverage Control Agency for possible for administrative action.

YOU'RE AGENCY HERE

Evidence Documentation
(Attachment #5)

CASE NUMBER # _____



Beer purchased by buyer (i.e. C.I. #07-0099) on January 29, 2009 at 22:05 hrs.

Business Name: Gas and Go, 112 Main Street, (city and state)

Seller: Name: Tom Smith
DOB: 07/18/1964
DL#: 0400519614106

PASS LETTER
(Attachment #6)



To: (enter business name and address)

Date: January 30, 2009

Re: Alcohol Compliance Check

On Friday, January 30, 2009 the Alcohol Enforcement Team conducted a compliance check of your establishment to determine if your staff would sell alcohol to a minor. Our “underage buyer” was not successful in purchasing an alcoholic beverage. The server, (name), correctly identified the underage buyer and refused the sale of alcohol and should be commended for their actions.

As you know, you as the license holder carry the primary legal responsibility for ensuring that staff complies with alcohol laws. Thank you for training your employee’s and maintaining a zero-tolerance towards underage drinking.

If you need to obtain Responsible Alcohol Sales and Service (RASS) training for any of your employees who have not yet been trained, you may contact Department of Revenue, Liquor Control Division at (406) 444-4307 for information regarding the state RASS class, Let’s Control It, or for information on other pre-approved RASS courses.

Respectfully,

Officer Name
Officer Title
Agency Address
Agency Phone Number

P.S. Great Job! Please feel free to contact me if you have any questions.

FAILURE LETTER
(Attachment #7)



To: (enter business name and address)

Date: January 30, 2009

Re: Alcohol Compliance Check

On Friday, January 30, 2009 the Alcohol Enforcement Team conducted a compliance check of your establishment to determine if your staff would sell alcohol to a minor.

When the team entered your establishment, the underage buyer was successful in purchasing alcohol from employee (NAME) and a transaction was completed.

(EMPLOYEE NAME) was cited under 16-3-301 MCA , Unlawful sales to a minor. You as the license holder carry the primary legal responsibility for ensuring that staff complies with alcohol laws. Per our agreement with the State of Montana I am required to forward a report to the Department of Revenue, Liquor Control Division for administrative action.

We recommend that you obtain Responsible Alcohol Sales and Service (RASS) training for all your employees who sell alcohol. For information regarding the state's RASS class, Let's Control It, or a pre-approved RASS course, contact the Department of Revenue, Liquor Control Division at (406) 444-4307

Respectfully,

Officer Name, Officer Title

Agency Address

Agency Phone Number

**MEDIA RELEASE
(Attachment #8)**

On Friday, October 17th, members of the Alcohol Enforcement Team conducted Alcohol Compliance Checks to determine if local establishments would serve alcohol to minors. Out of the seven businesses checked only two passed, by determining the minor was under the age of 21.

When asked, the Minor was to produce their own valid Montana License which shows the minor to be under the age of 21. There was no attempt to deceive the servers.

Below is a list of establishments that passed:

- Bob's Liquor Store
- Red Wines Club
- Gas and Go

Below is a list of establishments that failed:

- Caper's Restaurant,
- Eagles Club
- Mercantile

Establishments that serve alcohol are encouraged to attend Responsible Alcohol Sales and Service (RASS) Training. These classes are geared for checking ID's, education on Montana liquor laws and liability. You may contact the Department of Revenue, Liquor Control Division at (000)000-0000 for the state's RASS class schedule or for a list of pre-approved RASS courses.

Over the weekend 5 youths were arrested in connection with possessing alcoholic beverages. Flathead County Deputies also responded to a Saloon for a disturbance. On scene they determined one of the patrons was only 20 years old and was intoxicated. The patron received a citation for Minor in Possession of Alcohol; the bartender was cited for serving a minor. (enter your own agency information in this paragraph)

The Alcohol Enforcement Team is encouraging all establishments to educate themselves on asking and reading an ID. The number of incidents involving alcohol can be reduced by all of us doing our part.

"It doesn't pay, to serve minors".

Deputy/Officer _____

GENERAL RELEASE OF LIABILITY FROM RIDER ACCOMPANYING OFFICER

(Attachment # 10)

For and in consideration of my being allowed to ride in a (enter agency name) vehicle and accompany an employee or agent of said entity for my own personal benefit, I do hereby release the (enter agency name) , a political subdivision of the State of Montana, the (enter agency name), and any and all elected or appointed officials, administrators, officers, employees, volunteers, agents, insurers and any other individuals or entities affiliated with such persons and/or entities, from any and all civil liability or any and all forms of injury which may arise as a result of my riding with and/or accompanying any person affiliated with such persons or entities.

I acknowledge that I understand that there are many known and unknown dangers and/or risks associated with me accompanying a law enforcement officer and I grant a general release, for myself, my heirs, executors, administrators and assigns and I waive, remise and forever discharge and release the (enter agency name) and any and all elected or appointed officials, administrators, officers, employees, volunteers, agents, insurers and any other individuals or entities affiliated with such persons and/or entities from any and all claims, several or otherwise, past, present or future, which can or may ever be asserted as a result of any injuries or damages, physical or mental, sustained by me while I am accompanying any of the aforementioned persons or entities, whether in or out of a vehicle.

I have read the foregoing and I understand that the terms of this agreement are contractually and legally binding and that no verbal statement to the contrary, by any person or entity, can void or alter the terms of this agreement.

Rider Name: _____

Rider Signature: _____

DATED this _____ day of _____, 20____.

**Buyer Documentation
(Attachment #)**

CASE NUMBER # _____



(Photograph of buyer the day of the operation)

Buyer Information: C.I. # 008-0013

This photo to remain in buyers file until employment is ceased.

Location of buy: John's Pub
123 W. Main
Anywhere USA, MT

Date/Time of buy: January 29, 2009 at 22:05 hrs.

SAMPLE REPORT
(Attachment # 11)

On January 29th, 2009 members of the Alcohol Enforcement Team conducted valley wide alcohol compliance checks in _____ County. CI #08-0013 was utilized and observed during the entire operation.

When asked, the CI presented his/her real (STATE) identification showing his/her true age. There was no attempt to deceive the seller.

At approximately 1700 hours CI #08-0013 entered the (enter location name and address), with Officer/Deputy (enter name). The CI selected a six pack of Bud Light, a known alcoholic beverage from the stores cooler. The CI then approached the clerk, later identified as (Name of Clerk). After learning the total cost, the CI provided (the clerk) the money and change was received. The CI then exited the store. At no time did (the clerk) request to see the CI's identification, nor did they ask if the CI was 21.

Officer/Deputy (enter name) approached (the clerk) and identified himself and his assignment. He explained the (enter business name) was the subject of an alcohol compliance check and that he had observed the sale to a minor. (The clerk) was cited for providing alcohol to a minor, a violation of 16-3-301 MCA. The alcohol was kept for evidentiary purposes.

Attachments: Photo of purchased alcohol
 Photo of buyer
 Copy of buyer ID used during purchase

Surgeon's General's

"CALL TO ACTION"

- • Enforcement of minimum drinking age laws and other measures that directly reduce alcohol availability. Enforcement should target underage drinkers, merchants who sell alcohol to youth, and people who provide alcohol to youth.
- • Appropriate parental penalties for adolescent alcohol use, such as loss of privileges (e.g., allowance, going out with friends, and use of the car).
- • Holding adults accountable for underage drinking at house parties even when those adults are not at home.
- • Enforcement of zero tolerance laws that ban underage youth from driving with blood alcohol content (BAC) above detectable levels.
- • Any measure that decreases the availability of alcohol to youth and so raises the cost of getting it.

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