



Enforcing the Alcohol Age-of-Sale Laws in Montgomery County

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OLO Report 2002-1

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Executive Summary

While reducing alcohol sales to minors will not eliminate underage drinking, OLO recommends that Montgomery County maintain a vigorous program of compliance checks as part of an overall strategy to discourage alcohol consumption by persons under 21.

The empirical research shows that a well-designed compliance check program does reduce alcohol sales to underage persons. In addition, compared to other strategies used to enforce alcohol age-of-sale laws, compliance checks are relatively easy, quick, and less expensive.

A well-publicized compliance check program provides another opportunity to reinforce a community norm that the sale of alcohol to minors is unacceptable. The County's responsibility to strictly enforce the alcohol age-of-sales laws seems particularly important because of the unique role the County has both in selling alcohol and licensing establishments to sell alcohol.

OLO recommends several changes to improve the effectiveness and efficiency of the compliance check program. To address gaps in communication and coordination, key representatives from the Board of License Commissioners (BLC), Office of the BLC, Police Department, Office of the County Attorney, and Office of the State's Attorney should reach agreement on the basic parameters of the compliance check program. Issues to reach accord on include: the frequency and timing of compliance checks, protocols for selecting and using underage buyers, the respective role of the Police Department and Office of the BLC for conducting compliance checks, and time frames for following-up with administrative and criminal charges against violators.

Consistent with the empirical research on deterrence, OLO recommends that the County seek to deliver certain, swift, and severe penalties to licensees who sell alcohol to underage persons. This practice should be maintained even during times when a larger than expected number of licensees are charged with selling alcohol to a minor. Toward this goal, OLO recommends that:

- The Board of License Commissioners should commit to taking administrative licensing action on underage alcohol violations within 100 days of a reported incident, and adjust its hearing schedule as needed to meet this 100-day target for action;
- The County Attorney should assign an Assistant County Attorney to present the County's cases on sale-to-minor violations in show cause hearings before the BLC; and
- The BLC should adopt a penalty matrix for alcohol law violations that includes a mandatory license suspension for licensees who commit a second sale-to-minor offense within three years.

Additional recommendations to improve the County's compliance check program are: to better publicize program results and the penalties imposed on establishments for selling alcohol to minors; and support State law changes that would allow police officers to issue a criminal citation to a clerk/server for selling alcohol to a person under 21. Finally, OLO recommends that County-owned liquor stores that sell alcohol to an underage person face administrative penalties comparable to those faced by private retailers.

CHAPTER A: AUTHORITY, SCOPE, AND METHODOLOGY

1. Authority

Council Resolution 14-965, FY 2002 Work Program of the Office of Legislative Oversight, adopted July 24, 2001.

2. Scope and Organization of Report

The County Council asked the Office of Legislative Oversight (OLO) to evaluate the County's efforts to enforce alcohol age-of-sales laws, with a particular focus on conducting compliance checks using underage buyers. The report is organized as follows:

Chapter B, The Empirical Research, summarizes what can be learned from the published research about the prevalence of underage alcohol use, the sale of alcohol to underage persons, and enforcement trends. The chapter also summarizes the empirical research on the effectiveness of compliance checks as a strategy for enforcing alcohol age-of-sales laws.

Chapter C, The Laws, summarizes the State laws and local regulations that pertain to the County's enforcement of alcohol age-of-sales laws.

Chapter D, Compliance Checks in Montgomery County, examines how compliance checks are conducted in the County, and the process and record of pursuing administrative and criminal penalties vs. those who sell alcohol to persons under the age of 21.

Chapter E, Comparative Information, provides information from other jurisdictions on compliance check practices and the pursuit of administrative and criminal penalties vs. those who sell alcohol to underage persons.

Chapter F, Other methods used to enforcement alcohol age-of-sales laws, lists other strategies (i.e., other than compliance checks) used to reduce the commercial sale of alcohol to underage persons and indicates the degree to which each strategy is used in Montgomery County.

Chapters G and H present OLO's Findings and Recommendations, and the final chapter (**Chapter I**) contains the written comments received on a final draft of the report.

3. Methodology

Karen Orlansky, Director of the Office of Legislative Oversight (OLO), Krista Baker-Hernandez, OLO Research Assistant, and Benjamin Stutz, OLO Research Assistant, conducted this study. OLO gathered information for this project in numerous ways including general research, document reviews, individual and group interviews, and on-site observations of agency practices. OLO worked with agency staff to compile process, workload, and other program data. OLO staff consulted with senior management as well as line practitioners from the different offices and departments involved.

During the course of conducting this study, OLO met directly with licensees, interviewed servers, attended alcohol awareness training, and accompanied police officers and an ATEs (Alcohol Tobacco Enforcement Specialist) on compliance checks. OLO staff also attended meetings of the Board of License Commissioners, Alcoholic Beverages Advisory Board (ABAB), Hospitality Resource Panel, Drawing the Line on Underage Drinking, Substance Abuse Policy Leadership Team, and the Montgomery Alcohol Committee. OLO also contacted law enforcement and liquor control staff from other jurisdictions.

Appendix A-1 contains a list of the print and Internet resources that OLO used during the study period.

4. Acknowledgements

OLO received cooperation from everyone involved in this study. OLO appreciates the information shared and insights provided by all staff who participated from State, County, and municipal agencies.

In particular, OLO thanks staff representatives from the Office of the Board of License Commissioners, Montgomery County Police Department (especially the Alcohol Initiatives Unit), Office of the County Attorney, Department of Health and Human Services, Department of Liquor Control, Department of Information and Telecommunications, Office of the State's Attorney, and the District Court. OLO also thanks the five appointed members of the Board of License Commissioners. OLO greatly appreciates the time taken by individual licensees to either attend a focus group discussion or talk with OLO on the telephone. Finally, a special thanks is owed to Assistant Chief Administrative Officer Bill Mooney.

CHAPTER B: THE EMPIRICAL RESEARCH

Substantial empirical research documents the effectiveness of the minimum-21 drinking age laws. Data show a direct correlation between the increase in the drinking age and a reduction in alcohol-related traffic fatalities. Passage of minimum- 21 drinking age laws is credited with saving some 1,000 teenage lives each year, as well as decreasing pedestrian fatalities, unintentional fatal injuries (not involving motor vehicles) and suicides. (Wagenaar et al, *Journal of Public Health Policy*, 1994) Alcohol use among young people is also associated with impaired school performance, physical abuse, unwanted pregnancies, and an increased risk of being injured while under-the-influence.

Research shows that those who begin drinking later in life are less likely to abuse alcohol as adults. Those who drink regularly before the age of 14 are at least three times more likely to experience alcohol dependency problems during their lives than those who did not drink until they were at least 21 years old. (Hingson, cited in *Impaired Driving Update* Fall 2001)

Alcohol has a negative effect on the development of the adolescent brain. Alcohol affects adolescents differently than it does adults. Alcohol use by teens appears to be linked to irreparable brain damage. One study found that the hippocampus (the area responsible for many types of learning and memory) in teens who abused alcohol were 10% smaller than those who did not. (Webb, cited in *Impaired Driving Update*, Fall 2001)

OLO surveyed the published research in order to answer the following questions:

- What is the prevalence of underage alcohol consumption in Montgomery County? How do rates of underage alcohol use in Montgomery County compare to statewide and national data?
- Where do persons under 21 years old obtain alcohol?
- How readily do commercial establishments sell alcohol to persons under 21 years old?
- What is the public's opinion toward enforcement of underage drinking laws?
- Are compliance checks an effective strategy for reducing commercial alcohol sales to minors? Do they reduce rates of underage drinking?

Comparative information about the enforcement of alcohol age-of-sales laws in other jurisdictions can be found in Chapter E, beginning on page 50.

Question #1: What is the prevalence of underage consumption of alcohol in Montgomery County? How do rates of underage alcohol use in Montgomery County compare to state- and nationwide data?

Surveys from across the country show significant alcohol use by young people under the age of 21 years. The prevalence of alcohol use increases rapidly with age. In 2000, the percentage of Montgomery County teens that reported consuming alcohol is somewhat less than the percentages reported state and nationwide.

The Maryland Adolescent Survey

Every two years the Maryland Department of Education surveys 6th, 8th, 10th, and 12th graders throughout the state on their use of alcohol, tobacco, and other drugs. Table 1 (below) summarizes the alcohol use reported by Montgomery County students during a single 30-day period.

The data show that the percent of students who report consuming alcohol rises rapidly with age. While only 2% of 6th graders in Montgomery County reported consuming beer, wine, or a wine cooler during a 30-day period, the percentages increase to almost 15%, 25%, and 40% through 8th, 10th, and 12th grades respectively. This pattern holds true for those who drink liquor or who report binge drinking (defined as consuming five or more drinks on a single occasion).

Across all categories, the reported use of alcohol in Montgomery County is at or below that reported across the state. Table 2 (page 5) compares Montgomery County's responses to those reported statewide. The differences range up to a 10% lower rate of use reported in Montgomery County.

**TABLE 1
PERCENT OF STUDENTS IN MONTGOMERY COUNTY WHO REPORT USING ALCOHOL IN THE LAST 30 DAYS**

	Montgomery County			
	6 th Grade	8 th Grade	10 th Grade	12 th Grade
Beer, Wine and Wine Coolers	2.3%	14.3%	24.7%	39.5%
Liquor (Rum, Vodka, etc.)	0.7%	8.1%	19.6%	35.3%
Five or more drinks on the same occasion	2.3%	5.8%	16.6%	27.5%

Source: Maryland Adolescent Survey, State Dept. of Education, 2001.

Over the last several years, alcohol use among adolescents across the country has declined, a trend reflected in Montgomery County except among 8th graders whose reported use of beer and wine during the last 12 months showed a small increase since 1998. Appendix B-1 (©4) contains Montgomery County data from the Maryland Adolescent Survey reports for 1994, 1996, 1998, and 2001.

Alcohol Use Data from National Surveys. The Monitoring the Future Report (MTF) annually surveys 8th, 10th, and 12th graders across the United States. The 2000 MTF interviewed more than 45,000 students.

The national data show the same trend as that seen in Montgomery County: underage alcohol use increases significantly with age. Table 2 contains some of the MTF's key results on underage alcohol use. In almost all categories the rates of alcohol use reported statewide in Maryland and in Montgomery County compare favorably with the rates reported nationally.

**TABLE 2
PERCENT OF STUDENTS WHO REPORT ALCOHOL USE
NATIONAL, STATEWIDE, AND COUNTY DATA**

Any alcohol use reported by students in:	6th Grade	8th Grade	10th Grade	12th Grade
United States*	Not reported	51.7	71.4	80.3
State of Maryland**	16.9	41.3	58.9	72.5
Montgomery County**	6.3	30.2	49.9	66.2

Any alcohol use in the past 30 days reported by students in:	6th	8th	10th	12th
United States*	Not reported	22.4	41.0	50.0
State of Maryland**	6.3	22.8	35.9	47.5
Montgomery County**	2.3	15.3	26.8	43.8

Five drinks or more on one occasion reported by students in:	6th	8th	10th	12th
United States (within past two weeks)*	Not reported	14.1	26.2	30.0
State of Maryland (within past 30 days)**	2.3	9.3	21.1	31.4
Montgomery County (within past 30 Days)**	2.3	5.8	16.6	27.5

*Source: National Institute on Drug Abuse, "2000 Monitoring the Future" survey.

**Source: Maryland Adolescent Survey, MDE, 2001 report.

Question # 2: Where do persons under 21 years old obtain alcohol?

Research data on alcohol acquisition by persons under 21 comes from a combination of surveys and focus groups of adolescents. Studies consistently report that:

- **Young people seek alcohol when and where they perceive that alcohol is available and that the risks of obtaining it are low; and**
- **Adults over 21 are the most common source of alcohol for underage drinkers; and**
- **The frequency of obtaining alcohol from commercial outlets increases with age.**

A 1995 study involving interviews with more than 7,000 9th graders, 12th graders, and 18-20 year olds found that:

- The most common source of alcohol for current drinkers in all three age groups was an adult aged 21 or over.
- The second most common source of alcohol for 18-20 year olds was a commercial outlet, while for 9th graders and 12th graders, the second most common source was another person under age 21.
- The frequency of obtaining alcohol directly from a commercial outlet significantly increased with age. (Jones-Webb et al, 1997¹)

**TABLE 3
CURRENT SOURCE OF ALCOHOL REPORTED BY STUDENTS**

Source of Alcohol for Current Drinkers, i.e., alcohol consumption within past 30 days	9th graders	12th graders	Persons Age 18-20
Adult aged 21 or over	46%	60%	68%
Another person under age 21	29%	29%	10%
Home	27%	6%	11%
Commercial alcohol establishment	3%	9%	14%

Source: Journal of Studies on Alcohol, May 1996. Some sources add to more than 100% because some respondents reported multiple sources.

¹ This study involved interviews with 2,269 9th graders, 2,377 12th graders, and 1,738 18-20 year olds.

The survey also found that underage drinkers with more discretionary income and underage drinkers possessing false identification were more likely to purchase alcohol from a commercial establishment. In terms of perceptions of alcohol availability, the survey found that:

- All three age groups felt it was easier to obtain alcohol from individuals 21 and over than it was to purchase alcohol directly from a commercial outlet;
- All three age groups perceived it was easier to purchase alcohol at a grocery store compared to a liquor store or bar; and
- The perception of how easy it was to purchase alcohol directly from commercial sources increased with respondents' age.

These findings are consistent with published findings from focus group research on where and how adolescents obtain alcohol. For example, focus groups of high school seniors conducted by the University of Minnesota School of Public Health found that:

- Individuals over 21 years of age were the most common alcohol source;
- It was perceived to be less risky to ask an older adult to purchase alcohol than to attempt to buy it themselves;
- The process of obtaining alcohol from an older friend, sibling, or co-worker was usually not planned, but instead occurred more spontaneously and often as part of a specific event such as a party; and
- Students rely on the same individuals to purchase alcohol for them on numerous occasions. (Jones-Webb et al, *Substance Use and Misuse*, 1997)

Other focus groups of adolescents have found that during the early teen years, alcohol supplies in the home are a common source of alcohol. In the mid-teen years, as drinking frequency increases, the major source of alcohol (usually beer) becomes parties. College students (under 21) report that their alcohol often comes from parties, which may also involve the resale of alcohol to younger adolescents. (Wagenaar et al, *Public Health Reports*, 1993)

Question #3: How readily do commercial outlets sell alcohol to persons under 21 years of age?

Empirical research consistently shows that many commercial outlets sell alcohol to persons under 21 years of age. One of the most widely cited studies of underage alcohol purchasability involved approximately 1,800 attempted purchases in 900 outlets across 24 cities. **The study found that underage buyers were able to purchase alcohol without any questions approximately half of the time.** (Forster et al, *Preventive Medicine*, 1995)

Another research study involving purchase attempts by 19 and 20 year olds in three locations found that underage purchasers successfully bought beer on: 97 of 100 purchase attempts in Washington D.C.; 82 out of 102 attempts in Westchester County; and 44 of 100 attempts in Albany County and Schenectady County, NY. For each of these attempts, the underage purchaser did not carry false identification and was instructed to answer truthfully any questions concerning his/her age. (Wagenaar, *Journal of Studies on Alcohol*, 1996)

Surveys and focus groups of underage drinkers who have bought alcohol from a commercial establishment report the following factors often lead to successful alcohol purchases:

- Underage drinkers learn through word of mouth which commercial outlets more easily sell alcohol to persons under 21;
- Purchasers under 21 seek out establishments that are crowded with busy sales clerks/bartenders; and
- Purchasers under 21 often do not carry a wallet or purse; if asked for identification, they say they either lost or forgot it at home. (Jones-Webb, et al, *Why and In What Context Adolescents Obtain Alcohol from Adults: A Pilot Study*, 1997; Wagenaar, et al, *Where and How Adolescents Obtain Alcoholic Beverages*, 1993)

Researchers have also studied whether certain characteristics or practices of merchants are associated with an establishment's propensity to sell alcoholic beverages to persons under 21. A sample of findings from studies that looked at this issue are summarized below:

- One study found that bars were less likely than liquor stores to sell to underage drinkers. In addition, outlets that had a manager on the premises at all times, outlets that did not allow selling of alcohol for on-site consumption to a person 21 or over who is accompanied by a person under 21, and outlets requiring the training of all staff sold less often to persons under 21. (Wolfson et al, *Addiction* 1996)
- One study found that outlets that belong to a chain sold less frequently to underage persons when compared to independent outlets; and that newer establishments sold less often to underage persons when compared to older off-sale outlets. (Preusser and Williams cited in Wolfson, *Journal Study of Alcohol*, 1996)
- One study found that outlets in upscale neighborhoods were less likely than outlets in middle income or depressed neighborhoods to sell to underage persons. Preusser and Williams also found that having a manager on the premises was associated with a 15% lower purchase rate in bars; and that establishment that required formal training of all bar staff was associated with a 19% lower purchase rate. (Wagenaar, *Journal of Studies on Alcohol*, 1996)

Question #4: What is the public's opinion on enforcement of alcohol age-of-sales laws?

Survey research evidence a high level of public support for most alcohol control policies. A 1997 national survey based upon telephone interviews with more than 7,000 households sought to measure public opinion on a range of alcohol control policies.² The survey found that support for alcohol control policies remains high across demographic categories and political orientations.

The survey results included some questions that asked explicitly about enforcement of the under-21 drinking laws. The survey found that:

- 80% of respondents favored laws that mandate persons who serve alcohol must be at least 21 years old; and 89% favored laws that mandate training for owners and servers of alcohol in all establishments.
- 87% of respondents favored laws that restrict the drinking of alcohol in public places, e.g., parks, stadiums, city streets, and college campuses. Many respondents support these public restrictions because they associate these locations with underage drinking.

² Public Opinion on Alcohol Policies in the United States: Results from a National Survey 1997, Alexander C. Wagenaar, Eileen M. Harwood, Traci L. Toomey, Charles E. Denk, and Kay M. Zander.

- 66% of all respondents favored the practice of conducting compliance checks as a way to enforce the minimum age drinking laws, and 83% favored assessing financial penalties on persons who provide alcohol to underage drinkers.

Table 4 (below) shows how support for compliance checks and imposing financial penalties on those who provide alcohol to underage persons was even stronger among sectors of the public with higher education and household income above \$50K. The support for these policies varied little either by race or political orientation.

TABLE 4
RESPONSES TO PUBLIC OPINION SURVEY ON ALCOHOL ENFORCEMENT

	Percent in Favor of Conducting Compliance Checks	Percent in Favor of Imposing Fines on those who Provide Alcohol to Underage Persons
All Respondents	66%	83%
By Demographic Characteristics		
Education/Income		
College degree +	71%	88%
Less than college degree	64%	82%
Income		
Income more than \$50K	73%	89%
Income less than \$50K	62%	81%
Race		
White	67%	85%
Non-white	63%	78%
Political Orientation		
Conservative	65%	83%
Moderate	65%	84%
Liberal	67%	80%

Source: Wagenaar et al, 1997

The views of law enforcement officers. A 1992 study solicited the opinion of law enforcement officers (across four states) on the enforcement of the minimum drinking age. (Wolfson et al, *Public Health Reports*, 1995) The study found that most officers know where underage drinkers obtain alcohol in their respective communities. However, officers report that competing demands on their time prevent greater levels of alcohol-related enforcement.

The study also found that officers see many challenges to successfully reducing the availability of alcohol to minors, especially when legal age adults provide the alcohol. Officers are more optimistic about their ability to reduce the commercial flow of alcohol, but cite lack of direction from superiors and lukewarm community support for strict enforcement of alcohol laws as leading to inconsistent enforcement efforts by the police.

Question #5: Are compliance checks an effective strategy for reducing alcohol sales to minors? Do they reduce rates of underage drinking?

Substantial anecdotal evidence and a handful of more rigorously designed research studies indicate that compliance check operations can be effective in reducing sales of alcohol to underage persons. A number of studies evidence that increased rates of compliance with alcohol age-of-sales laws are correlated with the implementation of programs characterized by multiple waves of compliance checks and the imposition of penalties against violators. (Toomey, et al., 1999)

To date, there have been no statistically reliable studies that measure the impact of compliance checks in a community on the consumption of alcohol by the underage persons in that community. **A repeated theme in the empirical research on ways to reduce alcohol consumption by young people, however, is that no single approach will entirely solve the problem.** In addition, it appears that individual approaches (such as compliance checks) implemented and used in combination with other strategies may in fact reduce the incidence of teenage drinking.³

Enforcement actions in support of minimum purchase age laws can be targeted either on the seller or the underage buyer. Because there are far fewer licensed retail outlets that sell alcohol compared to the number of potential underage buyers, it is argued that targeting sellers is a more efficient use of limited law enforcement resources. In addition, a greater range of sanctions, including both criminal charges and administrative licensing action, can usually be taken against a licensee who sells alcohol to a minor.

In addition, compared to other strategies for reducing alcohol consumption by youth, compliance checks are relatively easy to do. Once a program of regular compliance checks is organized, it is a relatively easy, quick, and inexpensive program to implement.

Specific studies that have examined compliance checks as a strategy for reducing the sale of alcohol to persons under the age of 21 are summarized below. Following the research summaries is a list of the published advice on how best to structure "effective" compliance checks.

³ Forster cited in *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*, 1999.

Study of Compliance Checks in Denver (Preusser et al, *Journal of Safety Research*, 1994)

This study by Preusser et al evaluated the effect of compliance check operations on underage alcohol sales in Denver, Colorado. It stands as one of the few pieces of empirical research that looked at the results of compliance checks using underage buyers on a randomly selected subset of all outlets within a single community.

In this study, the Denver Police Department and Denver Municipal Division of Excise and License conducted four successive waves of compliance checks (using underage police cadets) between June 1992 and October 1993. Each wave of enforcement involved 100 attempts to purchase beer from a randomly selected subset of all retail outlets in the community. (At that time, there were 374 alcohol license holders in Denver.)

The establishments that sold alcohol to the underage buyer were subject to fines and beverage license suspensions. As Table 5 (below) shows, the second and third waves of enforcement resulted in higher compliance rates. However, the study found no difference in compliance between the third and fourth waves.

**TABLE 5
RESULTS OF FOUR WAVES OF COMPLIANCE CHECKS IN DENVER, COLORADO**

Round	Month/Year of Purchase Attempt	Compliance Rate*
First (baseline)	June 1992	41%
Second	July 1992	68%
Third	October 1992	74%
Fourth	April 1993	74%

*Compliance rate is calculated as the percent of the 100 total attempts by an underage buyer to purchase beer in which the buyer was not successful.

Review of Compliance Check Frequency in 70 Cities (Radecki, *Center for Substance Abuse Prevention*, 1997)

In this study (first published in 1993 and updated in 1997), Radecki examined police compliance check practices and associated compliance rates in 70 cities. Radecki found that when compliance checks are done infrequently, their impact can be minimal. However, Radecki concluded that if used more frequently, the evidence is strong that police compliance checks of merchants will "dramatically decrease the willingness of merchants to sell alcohol to a minor without checking an ID."

Based upon this review, Radecki reported the following correlation between increased frequency of compliance checks and increased rates of compliance.

TABLE 6
COMPLIANCE CHECK FREQUENCY AND COMPLIANCE RATE IN 70 CITIES

Number of Cities	Frequency of Compliance Checks	Average Compliance Rate*
12	2 to 6 waves annually	85%
8	1/2 to 1 wave annually	72%
6	1 wave every 3-5 years	66%
44	One time	38%

*Compliance rate is calculated as the percent of total attempts by an underage person to purchase alcohol in which the underage person was not successful.

Results of Compliance Checks in Minneapolis (*Minneapolis Department of Health and Family Support, January 1999*)

The City of Minneapolis was one of the first large cities to provide empirical evidence that compliance checks conducted by law enforcement are associated with reduced sales of alcohol to underage persons. Table 7 summarizes the compliance rates that resulted from three rounds of compliance checks.

Minneapolis Department of Health and Family Support (MDHFS), working in cooperation with the Minneapolis Police License Investigation Division and the city's Regulatory Services, conducted three rounds of compliance checks. The first and third rounds were for research purposes only and did not involve enforcement action, i.e., the imposition of financial penalties for violators. The middle round was conducted by the police and violators were penalized.

First Round (December 1997 and January 1998). The purpose of the first round of compliance checks was to determine a baseline sales rate that measured the ease with which persons under 21 can purchase alcohol. In the first round, the police conducted 223 compliance checks on a random sample of off-sale and on-sale establishments. Although licensees were notified by mail as to whether they passed or failed, no establishments were penalized for selling to the underage buyers.

Second Round (April-August 1998). In the second round, the police conducted 137 compliance checks. Police notified all licensed establishments of the upcoming compliance checks and the locations of the compliance checks were selected randomly. The major difference with the second round was that violators were issued fines for selling alcohol to the underage buyers.

Third Round (August-December 1998). In the third round, the 131 of the 137 licensed facilities checked by police in the second round were subject to another compliance check. The remaining six facilities had either quit selling alcohol or changed ownership. Similar to the first round, no penalties were imposed on violators.

TABLE 7
RESULTS OF THREE ROUNDS OF COMPLIANCE CHECKS IN MINNEAPOLIS *

Round	Number of Compliance Checks	Violators Fined	Compliance Rate: Off-sale establishments	Compliance Rate: On-sale establishments	Compliance Rate- Total Sample
One	223	No	71%	54%	64%
Two	137	Yes	55%	52%	53%
Three	131	No	73%	78%	77%

*Compliance rate is calculated as the percent of total attempts by an underage person to purchase alcohol in which the underage person was not successful.

A SAMPLING OF OTHER STUDIES CITED IN THE PUBLISHED LITERATURE

- Grube reports the results of a compliance check program administered in three communities by the Prevention Research Center. The study found that commercial outlets that were subject to a compliance check were about half as likely to sell alcohol to an underage person on a follow-up compliance check. (Preusser et al cited in *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*, 1999.)
- The California Alcohol Beverage Control Department operates a statewide program that involves on-site visits with licensees and compliance checks conducted by local law enforcement agencies. The Department reports that compliance rates have increased from 70% to more than 90% in the participating cities. (Stroh cited in *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*, 1999.)
- The Plattsburgh Police Department and Clinton County Sheriff's Department in New York reports that after four waves of compliance checks conducted between February and December 1996, the compliance rate increased from 55% to more than 90%. Each wave involved between 37 and 57 compliance checks in a combination of liquor, convenience, and grocery stores. (Alcohol Epidemiology Program Fact Sheet, University of Minnesota, <http://www.epi.umn.edu/alcohol/>).

- In 1986 and 1987, the Michigan State Police conducted decoy operations using underage buyers. The Police reported that by the end of the program " . . . the percentage of establishments that would sell to underage buyers was averaging 20% . . . significantly better than at the start of the program when the percentage was around 75%." (cited in Journal of Safety Research, Fall 1994)
- In Keene, New Hampshire, the Police Department completed four rounds of compliance checks of the 25 local food stores that sell beer and wine. During the first round, the underage buyer successfully purchased alcohol in 23 out of the 25 establishments. During the second round, the underage buyer successfully purchased alcohol 15 times, and during the third round, the underage buyer succeeded 10 times. The underage buyer was not successful at all during the fourth round. (cited in Journal of Safety Research, Fall 1994)

Summary of Published Advice on How to Structure "Effective" Compliance Checks

The U.S. Department of Justice (Office of Juvenile Justice and Delinquency Prevention) and the U.S. Department of Transportation (National Highway Traffic Safety Administration) have both supported the development and publication of community guides on the prevention of underage drinking and enforcement of underage drinking laws. Authors of the guides include the Pacific Institute for Research and Evaluation (PIRE), PMB Communications, and Leonard Communications.

Based upon the experiences of jurisdictions across the country, these guides offer advice to others about how to structure "effective" compliance checks. In contrast to the research results summarized earlier, the advice offered is not necessarily linked to quantitative evidence that the approach advocated results in lower rates of underage alcohol sales. With this caveat, the most frequently offered pieces of advice are summarized below.

General Advice

- Compliance checks must be community-wide and build community support. Without this, the compliance check program will more likely incite industry opposition, which may result in the program being terminated or curtailed.
- To build community awareness and support, the compliance check program should begin with publicity, including a press conference and/or public hearing on the issue of underage drinking.
- Compliance checks should be carried out with a detailed written plan as to routes, schedule of underage buyers and officers at each location, documentation of cash used, and evidence containers to hold alcohol that is purchased.

- The penalties imposed for selling alcohol to an underage person should be significant, but not too severe. This is because law enforcement officials are less likely to impose penalties if the sanction is perceived as out of proportion to the violation committed.
- There should be follow-up communication to all licensed establishments that informs them whether they passed or failed the compliance check.
- An ongoing funding source for the compliance checks should be established. Options include special license fees or the use of fine revenue.

Advice for Selecting Underage Buyers

- Underage buyers should be 18 or 19 years old to avoid looking closer to 21. Also if a buyer is 20 at the time of the compliance check, there is a possibility that by the time of the hearing he or she has turned 21.
- When conducting a compliance check, underage buyers should be dressed casually. Female buyers should not wear make up and male buyers should not have any facial hair.
- All potential underage buyers should be age assessed by panel of individuals not associated with the compliance check program.
- It is preferable to use paid underage buyers. This gives them an extra incentive to attend court hearings, paid buyers also appear more neutral in the eyes of a court and reduces the time spent trying to find volunteer underage buyers.

Characteristics of "Fair" Compliance Checks

- Compliance checks need to be well designed to ensure that procedures are fair and not subject to legal or political attack. In order to avoid accusations of entrapment, a compliance check program should, for example:
 - Give licensees full notice of the upcoming compliance checks;
 - Offer assistance and training to licensees;
 - Use underage buyers who clearly look underage; and
 - Avoid use of false identification or other "tricks" to encourage an underage sale.
- Underage buyers should always answer truthfully to any questions asked of them concerning their age. If an ID is requested, the underage buyer should produce their actual underage ID.

- If an establishment passes a compliance check, a letter of commendation should be sent to the licensee, with a copy to the employee who was on duty and the local liquor board. Appendix B-2 (©5) is a sample letter used in the field.
- When carrying out compliance checks, all underage buyers should follow the same general procedure. It is recommended that underage buyers attempt to purchase a single beer in on-sale establishments, and a six-pack of beer in off-sale establishments.
- Jurisdictions typically advocate the use of one or two officers and one or more underage buyers to conduct compliance checks. Jurisdictions conducting the largest volume of compliance checks generally use a single officer and underage volunteer.

CHAPTER C: Legal Framework

Part 1 of this chapter provides an overview of the age-related alcohol laws in Maryland. Part 2 summarizes the structure and authority of the Board of License Commissioners in Montgomery County.

1. Age-Related Alcohol Laws

Minimum Drinking Age Laws: In General

In 1984, the U.S. Congress passed legislation that required all states to raise the minimum drinking age to 21. By 1988, all 50 states and the District of Columbia had enacted a minimum drinking age of 21 years. However, statutory language and practices for administering and enforcing this law vary considerably across the country.

In most jurisdictions, ABC (Alcohol Beverage Control) agencies and local law enforcement officers share enforcement of the age-21 drinking laws. In addition, when a violation of the alcohol age-of-sales laws occur, enforcement action can take the form of:

- Criminal prosecution of the individual clerk or server who sold the alcohol to the underage person; and/or
- Administrative licensing action against the holder of the liquor license in the establishment where the violation took place.

Depending on the state, the criminal penalties for supplying alcohol to a minor range in severity from a misdemeanor (punishable by a fine or imprisonment of less than one year) to a felony (punishable by imprisonment for more than one year). Specific penalties include fines (\$50 to \$10,000), jail sentences (maximum of 5 years), to community service, and/or driver license revocation (for minors).

The administrative sanctions that may be imposed on a licensee for selling alcohol to a minor also range in severity. Specific penalties for a first time offense range from a simple reprimand to a \$5,000 fine to a license suspension. One published survey of penalties reported that the actual revocation of a license for selling alcohol to a person under 21 years old is "rare". Some jurisdictions require violators to pay for their employees to attend alcohol service training classes, or require them to purchase a license scanner for their establishment.¹

¹ See page 60 for more information about license scanners.

The Minimum Drinking Age Law and Related Violations in Maryland

In Maryland, the only exceptions to the 21-minimum drinking age law are situations where the alcoholic beverage is being served by members of the immediate family in a private residence or served as part of a religious ceremony.²

Tables 8 and 9 summarize the specific age-related alcohol violations in Maryland. Table 8 (page 27) lists criminal violations for which the law does not permit the issuance of a criminal citation. Table 9 (page 28) lists violations for which a criminal or civil citation can be issued.³ These laws are briefly explained below.

Criminal Age-Related Alcohol Violations

Law Prohibits Alcohol Sales to Minors. Under State law, it is a crime (misdemeanor) for a licensee or any employee of the licensee to sell, furnish, or serve alcoholic beverages to persons under the age of 21. Violators are subject to a maximum fine of \$1,000 and/or imprisonment up to two years.⁴

If the purchaser is a resident of the State, the licensee may accept, as proof of age, a Maryland driver's license or Maryland identification card. If the purchaser shows a non-Maryland driver's license as proof of age, the law states that a licensee may not be found guilty of a misdemeanor if the licensee (or licensee's employee) used "due caution" to establish that a purchaser was not under 21 years of age.⁵

Law Prohibits Permitting Minors to Consume or Possess Alcohol on Premises. Under State law, it is a crime (misdemeanor) for a licensee or operator of any establishment that dispenses alcoholic beverages to permit a person under 21 years of age to consume or possess any alcoholic beverages on the premises. This law applies regardless of where the person under 21 purchased or obtained the alcoholic beverage. Violators can be charged with a misdemeanor and charged a maximum fine of \$50 in addition to any other applicable penalties.⁶

Zero Tolerance Law. All states and the District of Columbia have adopted so-called "Zero Tolerance" laws, which prohibit the operation of a motor vehicle by anyone younger than 21 if they have any measurable amount of alcohol in their blood or breath. In Maryland, for persons under 21, operating a vehicle with a BAC (Blood Alcohol Content) above .00 is a criminal (misdemeanor) violation of the Maryland Vehicle Law. The maximum criminal penalty is a fine of \$500.

² This exception is articulated in Article 27, Section 401A, Subsection (c)(i)(ii) Furnishing alcoholic beverages for consumption to person known to be under age 21.

³ Legislation is likely to be considered during the 2002 General Assembly session that would allow a law enforcement officer to issue a criminal citation for selling alcohol to a minor.

⁴ Article 2B, Section 12-108 and Article 2B, Section 16-503.

⁵ Article 2B, Section 12-108(a)(3).

⁶ Article 2B, Section 12-108(d).

Age-Related Alcohol Violations for which a Citation can be Issued

State law specifies a number of additional offenses related to alcohol age-of-sale and misrepresentation of age for which a law enforcement officer can issue a civil or criminal citation. Adult violators (over 18 years of age but under 21) must appear in the District Court to answer the charges. For most violations, the maximum penalty is a fine of \$500 for a first offense, and \$1,000 for a repeat offense. The law grants the Juvenile Court/Department of Juvenile Justice the authority to determine the appropriate consequence for a juvenile (person under 18) who is charged with underage possession of alcohol.

Illegal to possess. It is a civil offense for a person under the age of 21 to have any alcoholic beverage in his/her possession, or under his/her charge or control. The law provides an exception for a person under 21 who is an employee of an establishment that holds a license to sell alcohol and is in possession of alcohol in the course of employment, i.e., clearing tables, washing dishes. (Article 27, Section 400A)

Illegal to obtain/furnish. It is a civil offense for any person, to obtain for or furnish any alcoholic beverage to a person under 21 years of age, knowing that the person is under 21. It is an additional offense for a person who purchases a keg (containing an alcoholic beverage) to permit an individual under 21 years of age to consume any of the contents of the keg. (Article 27, Section 401)

As indicated above, the only exception to furnishing alcohol to a person under 21 is situations where the alcoholic beverage is being served by members of the immediate family in a private residence or served as part of a religious ceremony.

Illegal to attempt to obtain or purchase/false identification. It is a civil offense for a person under the age of 21 to "knowingly and willingly" misrepresent his/her age in order to obtain or purchase an alcoholic beverage. It is a separate offense for a person under the age of 21 to possess a card or document that falsely identifies the age of the individual. (Article 27, Section 400B)

Illegal to fail or refuse to furnish proof of identification and age. It is a civil offense for any person being issued a citation for any of the above violations to fail or refuse to furnish proof of identification and age upon request. Violators can be charged with a misdemeanor and charged a maximum fine of \$50. (Article 27, Section 403A)

Duty to Enforce Article 2B, Alcoholic Beverages

State law assigns the duty to enforce Article 2B, Alcoholic Beverages, to the State's Attorney and local law enforcement officials. The section on enforcement reads as follows:

It shall be the duty of the various State's Attorneys, sheriffs, constables, bailiffs, police and other prosecuting and peace officers of every sort, to enforce the provisions of this article, and to prosecute those persons charged with violation of the provisions thereof. No powers or duties herein conferred upon the Comptroller or any other State official shall be deemed to relieve local officials from this duty of enforcement and prosecution. Nothing herein shall be deemed to restrict in any manner the appropriation of funds by the political subdivision of this State to aid in the enforcement of the provisions of this article.⁷

2. The Board of License Commissioners – Structure and Authority

In Maryland, State law (Article 2B) governs the manufacture, sale, distribution, transportation, and storage of alcoholic beverages.⁸ The stated legislative intent of Article 2B is to empower the Comptroller, various boards of license commissioners and liquor control boards, all enforcement officers, and judges with "sufficient authority to administer and enforce the provisions of this article."⁹

Under authority granted in Article 2B, Montgomery County has assumed total and exclusive control over the importation, storage, and wholesale distribution of all alcoholic beverages, and the retail sale of liquor by the bottle. Further, the Board of License Commissioners for Montgomery County regulates the retail sale of beer, wine, and liquor-by-the-drink through a licensing, inspection, and enforcement system.

Article 2B contains all of the statutory provisions related to the licensing and sale of alcoholic beverages throughout the State. Article 2B also specifies the structure, authority, powers, and functions of the Board of License Commissioners in Montgomery County. The law states that "the office of the County Attorney and other County departments shall be made available to the Board."¹⁰ (See page 26 for information on the staff support provided to the County's BLC.)

Appointments to the Board of License Commissioners. The Board of License Commissioners (BLC) in Montgomery County consists of five members. Members are appointed by the County Executive and subject to confirmation by the County Council. Under State law the term of each member is four years and the BLC annually elects one of its members to serve as chair.¹¹ Appendix C-2 (©13) contains a list of the current BLC members and their respective appointment dates.

⁷ Article 2B, Subtitle 4, Enforcement, Section 16-401.

⁸ Article 2B, Alcoholic Beverages.

⁹ Article 2B, Section 1-101, Declaration of Policy.

¹⁰ Article 2B, Section 15-112.

¹¹ Article 2B, Section 15-104(c).

BLC members must be registered voters in the County, and not more than three BLC members can be from the same political party. By law, the BLC Chair in Montgomery County receives a salary of \$10,000 per year; each of the other four Commissioners receives \$9,000 per year.¹² By State law this is a fixed amount and does not vary with the number of hearings or meeting held by the Board.

BLC members in Montgomery County may not have any direct or indirect interest (financial or otherwise) in any business that manufactures or sells alcoholic beverages. BLC members may not hold any other public office, federal, state, or local. Subject to the Montgomery County's ethics law, a Commissioner may be an employee of the federal, State, or local government, but may not be an employee of the County's Department of Liquor Control. Finally, a Commissioner may not solicit or receive any commission or gifts whatsoever from any person engaged in the manufacture or sale of alcoholic beverages, or a licensee licensed by the BLC.¹³

Powers and Functions of the Board of License Commissioners

State law authorizes the Board of License Commissioners in Montgomery County to issue alcoholic beverage licenses in Montgomery County.¹⁴ The law provides that the BLC may revoke or suspend any license issued under Article 2B for any cause which is necessary to promote the peace and safety of the community.¹⁵ Under certain circumstances, the BLC may impose a fine in lieu of suspending or revoking a license.¹⁶ The BLC has broad legal authority to adopt "reasonable rules and regulations as they deem necessary to enable them effectively to discharge the duties imposed upon them by this article."¹⁷

State law grants the BLC considerable discretion in the issuance of licenses and in determining administrative penalties for violations of the alcoholic beverage laws, rules, and regulations. State law and the BLC's own rules and regulations concerning enforcement of Article 2B are described below. Chapter D provides more details about the BLC's practices with respect to enforcing the alcohol age-of-sales laws.

Authority to Suspend/Revoke License or Assess a Fine

State law outlines when the Board of License Commissioners (BLC) "may" revoke or suspend a license to sell alcohol, and lists a number of circumstances under which the BLC "must" revoke or suspend a license to sell alcohol.

¹² Article 2B, Section 15-104(c) and 15-109(q).

¹³ Article 2B, Section 15-112(q).

¹⁴ Article 2B, Section 15-112(a).

¹⁵ Article 2B, Section 10-401(a)(2).v

¹⁶ Article 2B, Section 16-507(q).

¹⁷ Article 2B, Section 15-112 and Section 16-301.

When the Board "may" revoke, suspend, or assess a fine. State law, provides that the BLC "may" revoke or suspend a license or permit to sell alcohol for any cause if the BLC determines it is "necessary to promote the peace or safety of the community in which the place of business is situated."¹⁸

State law also permits the Montgomery County BLC to impose a fine in lieu of suspension/revocation under certain conditions.¹⁹ The law, provides that for any cause that the BLC is permitted to but not required to suspend or revoke a license, the Board may impose a fine subject to the following conditions:

- The fine may not exceed \$20,000 for each case;
- All fines collected must be deposited in the County's General Fund;
- The Board must have promulgated rules and regulations to carry out this authority; and
- The Board must determine that payment of the fine will achieve the desired disciplinary purpose and allowing the licensee to continue to operate would not impair the public welfare.

In addition, when the BLC suspends or revokes a license or assesses a fine, the BLC must adopt a written resolution that contains a statement of the facts and findings forming the basis of the decision, the vote of each Board member, and information on how to appeal the decision.²⁰

The Board's Rules of Procedures include two rules that directly address this issue of a licensee paying a fine instead of facing a license suspension or revocation. Specifically:

Rule 8, Offer and Compromise, provides that when a licensee is notified to appear before the BLC for a show cause hearing, the Board may "make an offer and recommendation or compromise by which the licensee voluntarily waives the right to the show cause hearing, admits the violation as charged, and agrees to pay a monetary fine, or elects to have its alcohol beverage license suspended for a specified period, as determined by the Board."

Rule 13, Fine in lieu of suspension or revocation, repeats the conditions outlined in the law²¹ (summarized above). Rule 13 also requires the Board to issue a notice to stop selling alcoholic beverages to any licensed facility which does not pay the fine assessed by the due date in the Board's resolution.

¹⁸ Article 2B, Section 10-401, Revocation and Suspension.

¹⁹ Article 2B, Section 16-507, Local Penalties.

²⁰ Article 2B, Section 16-507(q)(2).

²¹ Article 2B, Section 10-401 and 16-507(q).

When the BLC "must" revoke or suspend a license. State law lists 10 circumstances under which the BLC "must" revoke or suspend a license/permit to sell alcohol.²² The law does not dictate how long the license suspension must be. The list includes:

- Making of any material false statement in an application for a license or permit;
- Two or more convictions of one or more of the clerks, agents, employees or a licensee under Article 2B within two years; and
- Willful failure to keep the records required by Article 2B or to allow any inspections of such records by a duly authorized person.

Appendix C-3 (©14) contains the excerpt from State law that lists all of the circumstances under which the BLC must revoke or suspend a license.

The BLC and County-Owned Liquor Dispensaries

The County's Board of License Commissioners does not license County-owned liquor dispensaries (stores). However, State law (Article 2B, Section 15-203(d)(6)) provides that for purposes of enforcing the alcohol age-of-sales laws, a manager of a County liquor store or an individual with whom the County's Department of Liquor Control contracts with to operate a retail outlet are deemed licensees. The law further provides that an individual working in a County-owned store sells alcohol to a minor, "Is subject to fine and suspension or revocation of employment by the Board of License Commissioners in the same manner as a licensee or employee of a licensee. . . "

OLO understands that, to date, the Board of License Commissioners has not exercised this authority to issue an administrative sanction when a County-owned liquor store sells alcohol to a minor. In practice, when a police report contains information about a sale to minor occurring in a County-owned liquor store, taking administrative action has remained with the Department of Liquor Control.

Relationship of Criminal Charge to Administrative Licensing Action

Under Article 2B, Section 12-108, the only bar to a civil proceeding against a licensee for selling alcohol to a minor is a finding of "not guilty" in a criminal proceeding brought against the licensee or his/her employee in District Court for the same incident. Appendix C-1 (©6) contains a memo from the County Attorney that further explains the connection between the criminal and administrative penalty process.

²² Article 10-401, Revocation and Suspension.

The Rules and Regulations of the Board of License Commissioners

State law authorizes the BLC to establish Rules and Regulations necessary to enable the Board to discharge the duties imposed upon the Board by Article 2B.²³ A different section of Article 2B specifies that the BLC in Montgomery County shall adopt rules of procedure, subject to the approval of the County Council.²⁴

The BLC's Rules of Procedure can be found in Chapter 4 of the Board Rules and Regulations titled "Hearing and Rules of Procedure." The County Council most recently approved Chapter 4 of the Board's Rules and Regulations on August 1, 1995. Appendix C-4 (©16) contains a copy of the Council's most recent resolution of approval of the BLC's Rules of Procedure.

BLC's Rules and Regulations on Sale-to-Minor Violations

The rules and regulations adopted by the County BLC list Sales to Minors as the first item under Chapter 6, Prohibited Practices. The rule articulates the BLC's local enforcement of these laws in Montgomery County as follows:

A licensee, his/her agent(s) and/or employee(s) will not sell, serve or permit the consumption or possession of any alcoholic beverage to anyone under the age of 21. The licensee, his/her agent(s) and/or employee(s) shall determine that the person to whom the sale or service is made, or who is consuming or possessing an alcoholic beverage, is at least 21 years of age prior to the sale, service, possession, or consumption of any alcoholic beverage. The licensee shall be responsible for any violation of this section. (BLC Rules and Regulations, p.56)

Another specific reference to the sale-to-minor in the Board's Rules and Regulations is contained in Chapter 3 under the section titled, Alcohol Awareness Certification. Specifically, Section 3-13(c) of the Regulations state that:

Any licensee or employee of any licensee who is found guilty by the Board of serving alcoholic beverages to a minor or intoxicated patron, and whose license is not revoked, must take an approved alcohol awareness certification course within 60 days of the show cause hearing. (BLC Rules and Regulations, p. 28.)

²³ Article 2B, Section 16-301.

²⁴ Section 10-202(m)(4).

Appeals of BLC Decisions

State law provides that a final decision by the BLC on an application for an alcoholic beverage license or on a matter concerning the suspension, revocation, or assessed fine may be appealed to the Circuit Court -- under Maryland rules governing administrative appeals.²⁵

Since 1997, four appeals of BLC decisions on sale-to-minor violations have been filed by defendants with the Circuit Court. For various reasons, the Circuit Court dismissed three of the four cases, which had the effect of upholding the Board's decision. A settlement was reached in the fourth case.

Staff Support to the Board of License Commissioners in Montgomery County

The BLC is provided operational and administrative support by merit system employees in the Office of the Board of Liquor License Commissioners. The Executive Director of the Office reports directly to the Chief Administrative Officer.

The FY 02 approved operating budget for the Office of the BLC is \$758,790. The Office personnel complement totals 12.2 workyears:

- One Executive Director (MLS Manager 1);
- Five full-time and three part-time Alcohol Tobacco Enforcement Specialists; and
- Two full-time and two part-time administrative support staff.

The Office budget includes approximately \$20K for hiring underage buyers (on an hourly basis at minimum wage) to work with the inspectors on alcohol and tobacco compliance checks. In addition, the Office budget includes the compensation for the BLC members, as outlined in State law.

Role of the County Attorney. An Assistant County Attorney serves as the legal advisor to the BLC. The BLC's Rules and Regulations stipulate that the legal advisor will attend all meetings and hearings of the Board, and "provide legal advice to the chairman and to all Board members as requested." (Rule 1.2)

Rule 1.2 of the BLC's Rules and Regulations also states that: "In the appropriate case, an Assistant County Attorney may represent the County's position before the Board. However, at no time will the Board's legal advisor represent the County before the Board."

To date, no Assistant County Attorney has been assigned to present cases before the BLC. OLO understands that the reasons for this have been fiscal and resource constraints.

²⁵ Article 2B, Section 16-101(b).

TABLE 8
AGE-RELATED ALCOHOL CRIMINAL VIOLATIONS IN MARYLAND¹

Violation	State Law Reference	Maximum Fine	Maximum Imprisonment
Sale to minor Licensee or any employee of the licensee sells or furnishes alcoholic beverage to a person under 21	Art 2B Section 12-108 and 16-503	\$1,000	2 years
Permit consumption or possession by minor Licensee, proprietor, or operator of establishment dispensing alcohol permits consumption or possession of alcoholic beverage by person under 21 on premises	Art 2B Section 12-108 and 16-503	\$1,000 (additional \$50 fine allowed)	2 years
Under 21 BAC of anything higher than .00 First offense	Trans. 16-113 (b) (1) 27 -101 (b) and C&JP 10-307	\$500	None
Second or subsequent offense	Trans. 16-113 (b) (1) 27 -101 (b) and C&JP 10-307	\$500	None

¹ The law does not permit a law enforcement officer to issue a criminal citation for these offenses.

TABLE 9
AGE-RELATED ALCOHOL VIOLATIONS IN MARYLAND FOR WHICH CRIMINAL OR CIVIL
CITATION CAN BE ISSUED

Violation	Charging Section	Maximum Criminal Penalty¹	Must Appear Violation	Maximum Civil Penalty (For offenders who are at least 18 years old)¹
Possession of alcohol by person under 21	Art 27 Section 400A		Yes	\$500 first offense; \$1000 repeat offense
Obtaining alcohol for consumption by person under 21	Art 21 Section 401		Yes	\$500 first offense; \$1000 repeat offense
Furnish alcohol to a person under 21	Art 27 Section 401A		Yes	\$500 first offense; \$1000 repeat offense
Allow person under 21 to drink from a keg	Art 27 Section 401B (b)		Yes	\$500 first offense; \$1000 repeat offense
Misrepresentation of age to obtain alcoholic beverage from licensed seller	Art 27 Section 400		Yes	\$500 first offense; \$1000 repeat offense
Possession of false age ID by person under 21	Art 27 Section 400B		Yes	\$500 first offense; \$1000 repeat offense
Obtaining alcohol for person under 21	Art 27 Section 401		Yes	\$500 first offense; \$1000 repeat offense
Failure or refusal to furnish proof of identification and age	Art 27 Section 403A	\$50	Yes	\$500 first offense; \$1000 repeat offense

Source: Montgomery County Department of Police, Citation Manual, March 2000

¹ The penalty for a person under 18 years old is within the jurisdiction of the Juvenile Court/Department of Juvenile Justice.

CHAPTER D: COMPLIANCE CHECKS IN MONTGOMERY COUNTY

Under current practice, both the Montgomery County Police Department and Office of the Board of License Commissioners (BLC) conduct compliance checks for underage alcohol sales. By law, the authority for taking follow-up administrative licensing action against the licensees of the establishments where an underage sale is allegedly made resides with the BLC. The authority for pursuing criminal charges against the individual clerk/server who allegedly sold the alcohol to an underage person resides with the State's Attorney and the court system.

This chapter is organized into four parts:

- **Part 1, Protocols, Levels of Effort, and Results**, describes how the Department of Police and Office of the BLC conduct compliance checks, and reviews the rates of compliance reported by both agencies in recent years.
- **Part 2, Administrative Penalties**, explains the County's process for pursuing administrative licensing penalties against licensees of establishments that allegedly sold alcohol to a minor; and presents summary outcome data for FY 01 sale-to-minor cases.
- **Part 3, Criminal Penalties**, explains the County's process for pursuing criminal charges against individual clerks/servers who allegedly sold alcohol to a minor; and present summary outcome data for criminal charges filed between July 1998 and September 2001.
- **Part 4, Views of Licensees**, summarizes feedback obtained from licensees about the County's compliance check program.

1. Protocols, Levels of Effort, and Results of Compliance Checks

Overview. In recent years, both the Office of the BLC and the MCPD's Alcohol Initiatives Unit conducted a mix of randomly selected and targeted compliance checks. The two offices have only rarely coordinated either the location or timing of their respective compliance check operations.

The Office of the BLC started conducting compliance checks using underage buyers in the early 1990's. Between FY 1998 and FY 2001, the Office of the BLC conducted 965 compliance checks across 478 establishments. The annual compliance rate reported by the Office of the BLC ranged between 93% and 97%.

Between FY 00 and November 2001, the Department of Police conducted more than 298 compliance checks across 219 establishments. As a result of changing staff and inconsistent record keeping, the data on Police-sponsored compliance checks is not complete. For the data that are available, MCPD's Alcohol Initiatives Unit reports the annual compliance rate ranged between 35% and 84%.

There are multiple explanations for the different compliance rates reported by the two agencies. The most likely reasons are listed below.

- **Different times of day.** Officers from MCPD's Alcohol Initiatives Unit typically conduct compliance checks at night and on weekends, while the Alcohol Tobacco Enforcement Specialist from the Office of the BLC (for safety reasons) generally conducts compliance checks between 9:00 AM and 9:00 PM.
- **Different protocol.** Until recently, the underage buyers that worked with the Office of the BLC were instructed to walk out of the establishment if asked for age identification. In comparison, the underage buyers working with the Department of Police are instructed to show their driver's license. (Earlier this year, the Office of the BLC changed its protocol to more closely follow that of the MCPD.)
- **Different staffing arrangement.** One part-time Alcohol Tobacco Enforcement Specialist (working with one underage buyer) conducts compliance checks for the Office of the BLC; and conducting compliance checks is this staff member's primary responsibility.

In comparison, compliance checks conducted under the auspices of MCPD involve a variety of officers and underage buyers. The six MCPD officers assigned to the Alcohol Initiatives Unit conduct compliance checks as one among many alcohol-related enforcement activities, e.g., sobriety checkpoints, saturation patrols, surveillance operations. In addition, MCPD officers from the District Stations as well as law enforcement officers from the State Police, Cities of Gaithersburg and Rockville, and Office of the Sheriff participate in MCPD's intensive compliance check effort that typically occurs between Thanksgiving and early January.

The rest of this section describes in more detail the compliance check protocols followed by the MCPS and the Office of the BLC, and reviews available data on the results of compliance checks conducted by each agency in recent years.

MCPD's Alcohol Initiatives Unit: Compliance Check Protocol and Results

The Montgomery County Police Department (MCPD) started conducting compliance checks using underage buyers in the late 1970's. The number and timing of compliance checks has varied each year. According to Department staff, this has depended on factors such as the:

- Level of resources allocated to the Department's Alcohol Initiatives Unit (AIU);
- Competing demands placed on the Department;
- Availability of funds to pay for officers' overtime and for the purchase of alcohol; and
- Availability of trained, underage volunteers to work with officers to conduct compliance checks.

Tables 10 and 11 summarize data on the number and reported outcome of compliance checks in Montgomery County conducted by law enforcement officers for FY 00, FY 01, and the first part of FY 02. **As noted above, due to changes in staff and inconsistent record keeping, the data on Police-sponsored compliance checks are not complete.**

The data that are available indicate that during the past two and one-half years, 298 compliance checks across 219 different establishments were conducted under the auspices of MCPD's Alcohol Initiative Unit. The data also show that:

- The Police conducted a significantly higher number of compliance checks in FY 01 compared to FY 00. Based on the level of effort demonstrated in the past six months, the number of compliance checks conducted in FY 02 is likely to be even higher.
- Compliance checks conducted by the Police Department show a sharp one-year reduction in the rate of compliance during FY 01. Specifically, the compliance rate reported for FY 01 (35%) was markedly lower than it was in FY 00 (84%) and what it appears to be so far in FY 02 (83%).

MCPD officers assigned to the Alcohol Initiatives Unit conducted most of these compliance checks. However, a subset was conducted by other MCPD officers as well as law enforcement officers from the Sheriff's Office, the State Police, and the municipal police departments of Rockville and Gaithersburg. In most cases, these other law enforcement agencies involvement is part of the increased level of alcohol-related enforcement that occurs during the holiday season (Thanksgiving through New Year's Day) and prom season.

**TABLE 10
NUMBER OF COMPLIANCE CHECKS CONDUCTED BY MCPD
FY 00-FY 02***

FY 00 - FY 02 Year	Number of Compliance Checks	Number of Different Establishments Checked
FY 00	71	59
FY 01	129	119
FY 02*	98	92
Total	298	270

Source: MCPD, November 2001

*Partial data only.

**FY 02 data are for checks conducted between July 1 and November 10, 2001.

**TABLE 11
RATE OF COMPLIANCE IN CHECKS CONDUCTED BY MCPD
FY 00 - FY 02***

Year	Compliance Checks Conducted	Sales to Minors	Compliance Rate (% that refused to sell alcohol to minor)
FY 00	71	11	84%
FY 01	129	84	35%
FY 02**	98	17	83%
Total	298	112	62%

Source: MCPD, November 2001

*Partial data only.

**FY 02 data are for checks conducted between July 1 and November 10, 2001.

Summary of MCPD Compliance Check Protocol

In November 2001, the Police Department's Alcohol Initiatives Unit (AIU) issued written protocol for conducting compliance checks using underage buyers. This document articulated the general practices that the AIU has followed in recent years. MCPD's guidelines are summarized below. Appendix D-1 (©33) contains a complete copy of the MCPD's *Underage Volunteer Compliance Checks Operation Guidelines*.

Staffing. The recommended staffing of a compliance check operation is three people: one undercover police officer, one uniformed police officer, and one underage buyer.

Selection of Underage Volunteer (UV). Underage volunteers used in a compliance check must meet the following requirements:

- Be no older than 20 years of age;
- Display the appearance generally expected of a person under 21;
- Willing and able to testify at criminal and administrative hearings; and
- Not have a record of purchasing alcohol or using fake identification.

Where and when. Compliance check locations are chosen from a list of all licensed establishments in the County. Typically, an officer and his/her UV are assigned a geographic area of the County, in which to conduct a combination of random and targeted compliance checks. Targeted checks are conducted in establishments that are known to be repeat sellers of alcohol to minors and places that police have received complaints about.

Compliance checks are carried out at various times of the day, with priority placed on conducting checks when youth are known to try and purchase alcohol, i.e., evenings, weekends, in association with high school social events.

Instructions to Underage Volunteer. For off-sale establishments, an underage volunteer enters the premises, selects an alcoholic beverage (usually a six pack), and places it on the counter with the money. If the UV is in a bar or restaurant, he/she gets seated and orders a single alcoholic drink from a waiter or bartender.

UVs are instructed to either carry valid identification with them that show their correct date of birth, or carry no identification at all. UVs that carry identification must present it upon request; UV's that carry no identification must state their actual age and date of birth upon request. UVs are trained never to lie to induce a sale.

Officers' Responsibilities. The undercover officer maintains constant surveillance of the underage buyer. This is both to ensure the UV's safety and to enable the officer to witness any sale of alcohol that occurs.

If a sale of alcohol is made to the UV, the UV is instructed to leave the premises and wait in the officer's car before the clerk/waiter/bartender is confronted by the police officers. The UV is instructed to prepare detailed notes of the transaction to be incorporated into the police report.

Following a sale, the undercover and uniformed officers together enter the premises and make contact with the seller. Officers inform the seller of the violation and obtain all of the information needed for the police report and charging documents. If the owner/manager is present, he/she is also informed.

Reports needed for follow-up administrative and criminal charges. The investigating officers are responsible for completing the incident reports that are later transmitted to the Office of the BLC for follow-up administrative licensing action against the license. The investigating officers are also responsible for filing with the District Court Commissioner for criminal charges that are then sent to the State's Attorney.

Office of the BLC: Compliance Check Protocol and Results

The Office of the Board of License Commissioners (BLC) started conducting compliance checks using underage buyers in FY 92. According to the Executive Director of the Office of the BLC, the compliance rate started out relatively low (64% in the first year), but since then has increased to upwards of 95%.

When the program started, compliance checks were among the many types of inspections that all liquor inspectors carried out. Appendix D-2 (©37) contains a complete Alcohol Beverage Inspector Report form. However, following an incident in the mid-1990's when an inspector was assaulted during the course of an enforcement action, the responsibility for conducting all compliance checks has been assigned to one part-time Alcohol Tobacco Enforcement Specialist (ATES). This ATES works part-time for the Office of the BLC and full-time as a police officer for another Maryland county.

Tables 12 and 13 summarize data on the number and results of compliance checks conducted by the Office of the BLC between FY 98 and the first half of FY 02. During this time period, the Office of the BLC conducted a total of 1062 compliance checks in 502 different establishments. The data also show that:

- The Office of the BLC conducted an average of 236 compliance checks each year; the number ranged from a low of 156 to a high of 323; and
- The annual reported compliance rate ranged from 92% to 97%.

TABLE 12
NUMBER OF COMPLIANCE CHECKS CONDUCTED BY THE OFFICE OF THE BLC
FY 98 – FY 02*

Year	Compliance Checks Conducted	Number of Different Establishments Checked
FY 98	219	174
FY 99	267	201
FY 00	156	134
FY 01	323	258
FY 02*	97	93
Total	1062	860

Source: BLC, December 2001

*FY 02 data are for checks conducted between July 1 and December 31, 2001

TABLE 13
RATE OF COMPLIANCE IN CHECKS CONDUCTED BY OFFICE OF THE BLC
FY 98 - FY 02*

Year	Compliance Checks Conducted	Sales to Minors	Compliance Rate (% that refused to sell alcohol to minor)
FY 98	219	7	97%
FY 99	267	19	93%
FY 00	156	4	97%
FY 01	323	12	96%
FY 02*	97	8	92%
Total	1062	50	95%

Source: BLC, December 2001

*FY 02 data are for checks conducted between July 1 and December 31, 2001

In 1992, the Office of the BLC developed a written policy (Policy #1-4, approved on May 1, 1992) to govern the selection of underage buyers and procedures for conducting underage alcohol compliance checks.¹ Interviews with Office of the BLC staff and direct observations of compliance check operations indicate some similarities and some differences between the compliance checks conducted by the Alcohol Tobacco Enforcement Specialist and those conducted by police officers. The major differences are that the Office of the BLC:

- Pays (minimum wage by the hour) its underage buyers for conducting compliance checks and for appearing in front of the BLC;
- Conducts compliance checks using one Alcohol Tobacco Enforcement Specialist and an underage buyer;
- Does not conduct compliance checks after 9:00 PM; and
- Pursues administrative but not criminal penalties for a sale-to-minor violation.

In addition, until recently, the underage buyers working with the Office of the BLC never carried any identification during a compliance check. If asked for identification, the underage buyers indicated that they had left their ID in the car and simply left the premises. Earlier this year, the Office of the BLC changed its procedures so that when asked for identification, the underage buyer now shows his/her valid driver's license.

2. Administrative Penalties: Process and FY 01 Outcomes

The authority for taking administrative licensing action against licensed establishments that violate the laws/regulations surrounding the sale of alcohol in the County resides with the Board of License Commissioners.² This section first reviews the sequence of events that follows the BLC's receipt of a report about a sale-to-minor incident. The explanation of process is followed by a summary of timing and outcome data that OLO compiled based on sale-to-minor violations reported to the BLC during FY 01.

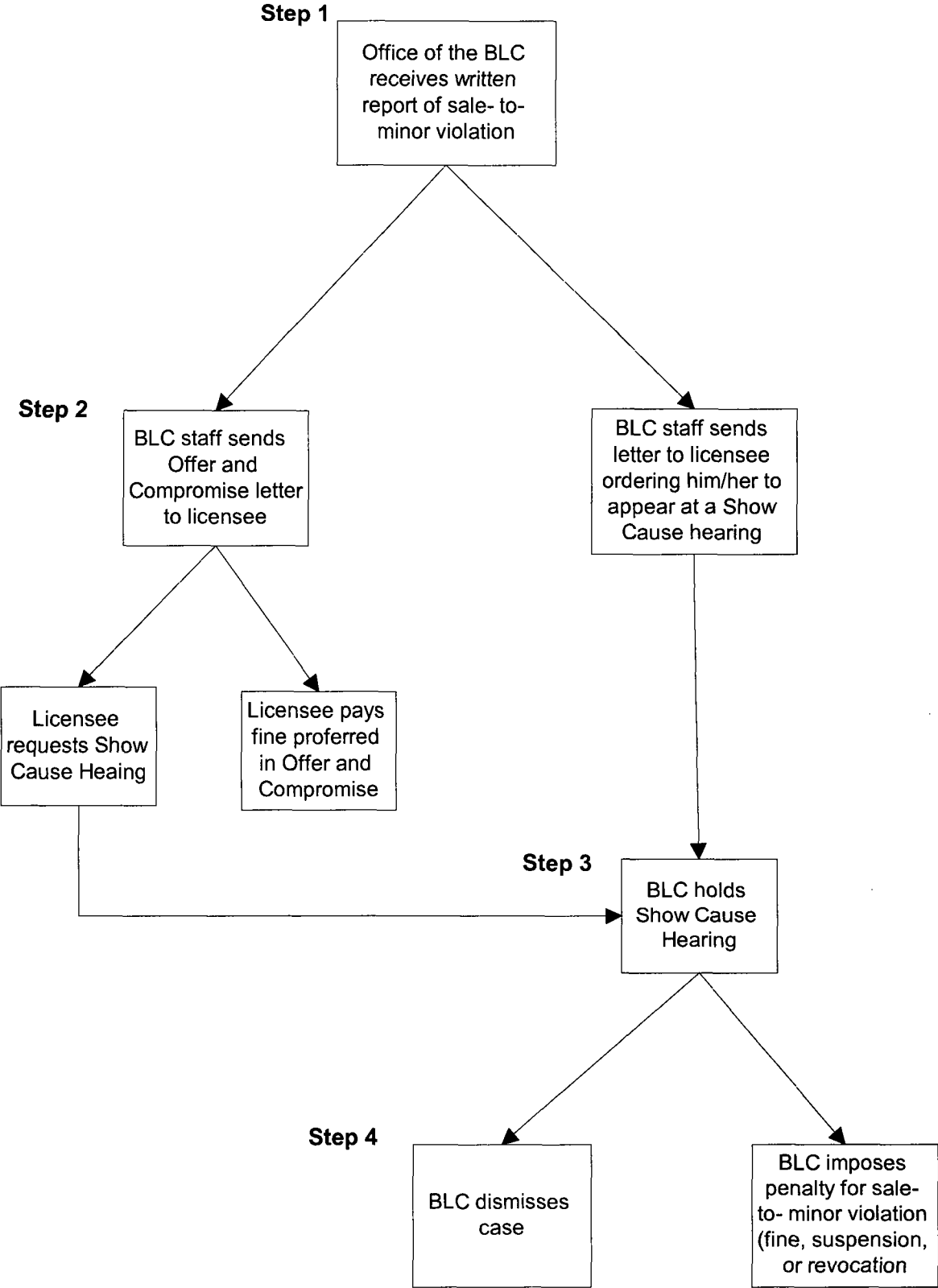
The Sequence of Events - Administrative Licensing Action

The chart on page 36a depicts the process that occurs after the Office of the BLC receives a report that a licensed establishment in the County sold alcohol to an underage person. The process is the same whether the report comes from a police officer or from an Office of the BLC inspector.

¹ The Executive Director of the Office of the BLC is in the process of updating these procedures to reflect some minor changes to how compliance checks are conducted.

² See Chapter C, The Legal Framework, for more details on the State law that outlines the BLC's authority.

Chart : Board of License Commissioners' Process for Administrative Action



Step 1. Office of the BLC receives written report of a sale-to-minor incident

Police officers report sale-to-minor incidents to the BLC by completing a MCPD Event Report and Underage Purchase Enforcement Form. These forms include a narrative by the investigating officer that details the time, location, and other details of the sale. In most cases, the forms are transmitted via inter-office mail from MCPD's Alcohol Initiatives Unit to the Office of the BLC.

Alcohol Tobacco Enforcement Specialists (ATES) report sale-to-minor incidents by filling out an Office of the BLC Inspection Report and an Underage Sale-to-Minor Information Sheet. These documents include narrative (similar to that provided in the MCPD Event Report) that details the incident. Because the ATES works at the Office of the BLC, there is no need to transmit the reports via inter-office mail.

Step 2. Executive Director decides how to proceed with case

The Executive Director of the Office of the BLC looks over every Event Report and Inspection Report that details a sale-to-minor incident. After review of the report and the previous record of the licensee named, the Executive Director decides either to:

- Send a letter to the licensee that extends an Offer and Compromise on behalf of the BLC; or
- Send a letter to the licensee that mandates he/she appear before the BLC for a show cause hearing.

Technically, the Executive Director has a third option, which is to recommend to the BLC that administrative licensing action not be pursued because there is insufficient evidence that a violation occurred. According to the Executive Director, this option has never been exercised on a report that alleges a sale-to-minor violation occurred.

Note: The Office of the BLC sends all reports about sale-to-minor incidents occurring in County-owned liquor stores to the Department of Liquor Control for follow-up action.

Letter of Offer and Compromise

An Offer and Compromise is a way of resolving sale-to-minor cases where the licensee admits his/her establishment sold alcohol to an underage person, waives his/her right to a show cause hearing, and pays a fine. The violation becomes part of the licensee's permanent file with the Office of the BLC.

A licensee may refuse to take the Offer and Compromise, and instead request a show cause hearing in front of the BLC. If the licensee accepts the Offer and Compromise, the licensee must circle that option on a form attached to the Offer

and Compromise letter, sign the form, enclose a check then return the form to the BLC staff offices. (Appendix D-3 (©38) contains a sample Offer and Compromise letter from the Office of the BLC.)

If the licensee refuses the Offer and Compromise and opts for a show cause hearing, he/she must circle that option on the form and return it to the BLC staff offices. The BLC staff will set up a time for a show cause hearing and send the establishment a subsequent show cause hearing notice.

According to BLC staff, most first-time offenders are offered an Offer and Compromise of \$1,000. During this past year, most second-time offenders also received a letter of Offer and Compromise, but with the higher fine of \$2,000.

Letter that mandates attendance at a show cause hearing

Establishments with two or more sale-to-minor violations within the past five years are routinely mandated to attend a show cause hearing in front of the BLC. Appendix D-4 (©40) contains a mandated show/cause letter from the Office of the BLC. In such situations, a licensee is sent a show cause hearing notice that lists the charge(s) and orders the licensee to attend a show cause hearing on a given date. The notice also informs the licensee of his/her right to be represented by an attorney and to summons witnesses on his/her behalf.

The show cause notice is sent to the licensee, and all witnesses, including whatever police officer(s), BLC inspector(s), and underage volunteers were involved in the reported incident. The notice serves as a subpoena ordering these individuals to attend the show cause hearing.

Step 3. The BLC holds a show cause hearing.

The BLC routinely meets the second and fourth Thursdays of each month; show cause hearings are typically scheduled during the BLC's afternoon sessions; the mornings are generally reserved for license application hearings. On average, the Board holds two to three show cause hearings per afternoon. (Not all the show cause hearings concern alleged sale-to-minor violations; show cause hearings are also held on other alcohol law violations, e.g., sale to intoxicated persons, failure to have someone on the premises that is certified by an alcohol awareness program.)

By law, hearings held by the County's BLC are not required to adhere to the strict rules of evidence. This is consistent with the rules for other quasi-judicial boards that are charged with imposing administrative (not criminal) penalties. In order to find a licensee guilty of violating the alcohol licensing laws, the BLC need only find that there is a "preponderance of evidence" that the violation occurred. This stands in contrast to a criminal proceeding where the court must find that a person violated the law "beyond a reasonable doubt."

State law requires that the Board develop rules of procedure subject to County Council approval. The Council (by resolution) most recently adopted Chapter 4 of the Board's Rules and Regulations in 1995. Rule 9, Conduct of show cause hearing, outlines the order of business at a show cause hearing but describes the protocol as "ordinary but not mandatory." OLO's observations of Board hearings between June and November 2001 found that the order of business outlined in Rule 9 is not strictly followed.³

The Board's rules also state that, "In the appropriate case, an Assistant County Attorney may represent the County's position before the Board." It is OLO's understanding that this provision has never been put into practice due to resource constraints in the County Attorney's Office.⁴

Step 4. The BLC makes its decision and issues a written resolution.

The BLC makes its decisions in closed session. In order for a decision to be made, three out of five Board members must agree on the decision. If only three members are present (the minimum number required for a quorum), then the decision must be unanimous. The law requires the BLC's decisions to be presented in the form of a written Board resolution that sets forth the findings of fact and formally outlines the disposition of the case. Appendix D-5 (©42) contains a sample of a recent BLC decision resolution for a sale-to-minor.

The BLC's options are to dismiss the case, or to find the licensee guilty of selling alcohol to a minor and impose a penalty. The Board will dismiss a case if the Board concludes that there was a lack of evidence that the violation occurred. (For example, this may result because a key witness failed to appear at the show cause hearing.) If the BLC finds the establishment guilty, the BLC can (by law) impose a fine of up to \$20,000, or suspend or revoke the establishment's license to sell alcohol.

The Office of the BLC staff drafts the Board's resolutions, which are then reviewed by the Office of the County Attorney before being formally approved by the BLC at its next session. The approved resolution is then mailed to the licensee. The resolution informs the licensee(s) that he/she may appeal the Board's decision to the Circuit Court of Montgomery County.⁵

³ See Appendix C-4, Rules and Regulations, Rule 9, Conduct of show cause hearing; that sets forth the order of business at a show cause hearing.

⁴ The rules also state that at no time will the Board's legal advisor represent the County before the Board." In other words, it would need to be a different Assistant County Attorney than the one assigned as the BLC's legal advisor.

⁵ See page 26 for more on appeals of BLC decisions.

Processing and Outcome Data on FY 01 Sale-to-Minor Cases

This section summarizes the data that OLO compiled on sale-to-minor violation cases reported to the BLC during FY 01. All of the information on the cases came from Montgomery County Police event reports and Office of the Board of License Commissioners' files.

Note: The patterns identified in the FY 01 data need to be reviewed with the knowledge that the number of violations reported in FY 01 represented a significant increase from the number reported in FY 00. The number and results of compliance checks conducted to date in FY 02, however, suggest that an increased BLC workload is likely to continue for the foreseeable future.

Type of Information Collected

For each sale-to-minor case, OLO collected the following information:

- Name and location of establishment where sale-to-minor incident reportedly occurred;
- Date the sale-to-minor incident occurred;
- Source of the case – police officer, ATES, or both;
- Whether the case was settled through an Offer and Compromise or show cause hearing;
- The time between an incident and the BLC's action;
- Case outcome; and
- Whether establishment had prior sale-to-minor violations.

Data Summary

Number and Resolution Method. There were 102 sale-to-minor violations reported to the Office of the BLC that occurred between July 1, 2000 and June 30, 2001. Almost half of the reported sale-to-minor violations originated from compliance checks that occurred during the MCPD's FY 01 Holiday Task Force, which took place between late November 2000 and January 2001.

The Office of the BLC's records show that administrative action proceeded on 95 of the 102 sale-to-minor violations. With respect to the other 7 cases: four had occurred in a County-owned liquor store and were forwarded to the County's Department of Liquor Control; and three cases concerned establishments that shut down before the BLC was able to take action.

Table 14 summarizes the resolution method for the cohort of the 95 FY 01 cases. The data show that approximately two-thirds were settled through the BLC's offering of a written Offer and Compromise (resulting in the payment of a fine). and about 30% were resolved through a show cause hearing. As of December 2001, four of the 95 cases are still pending resolution.

**TABLE 14
RESOLUTION METHOD FOR SALE-TO-MINOR VIOLATIONS
FY 01**

Resolution Method	Cases	
	Number	Percent of Total
Offer and Compromise	64	67%
Show Cause Hearing	27	29%
Case Still Pending*	4	4%
Total	95	100

*One licensee has not indicated if he will take the offer and compromise, and three licensees are waiting to appear at their scheduled show cause hearing.

Table 15 indicates how many of these 95 sale-to-minor cases involved licensees who within the past five years had a previous sale-to-minor violation. The data show that almost three-fourths of the FY 01 sale-to-minor cases involved licensees who had no previous sale-to-minor violation. 16 of the 95 cases involved licensees who had one previous sale-to-minor violation, and eight of the 95 cases involved licensees with two or more previous sale-to-minor violations.

**TABLE 15
NUMBER OF LICENSEES CHARGED WITH PREVIOUS SALE-TO-MINOR VIOLATIONS
WITHIN PAST FIVE YEARS
FY 01**

Number of Previous Sale-to-Minor Violations	Number of Cases
None	71
One	16
Two or more	8
Total	95

Source: BLC and MCPD, December 2001

Time Frames for Administrative Action. Table 16 summarizes the time that elapsed between key events in the resolution process. The data show that for the cohort of FY 01 sale-to-minor violations, the median time between the date an incident took place and when the BLC sent an Offer and Compromise letter to the alleged violator was seven weeks.

The median time between when the incident took place and when the show cause hearing occurred (or will occur) for cases in which the BLC requested the show cause hearing was 22.5 weeks. As would be expected, it takes longer for the BLC to send out show cause notices to and schedule hearings for establishments that request a hearing after receiving and refusing an Offer and Compromise. The median time between when the incident took place and when the show cause hearing occurred or will occur for such cases was 32 weeks.

During the time period studied, 23 licensees requested a show cause hearing instead of taking an initial Offer and Compromise. In some instances, the licensee later changed his/her mind and took the Offer and Compromise. Even though the BLC allows 20 days for the establishment to decide whether to accept or reject an Offer and Compromise, staff do not strictly enforce this deadline.

TABLE 16
ELAPSED TIME: FY 01 CASES

Between Date of Incident and:	Range	Median	Mean	Number of Cases
Date Offer and Compromise Letter Sent Out	1 week to 35 weeks*	6 Weeks	7 Weeks	N=76
Show Cause Hearing Date (BLC Requested)	8 weeks to 36 weeks	22.5 Weeks	23weeks	N=19
Show Cause Hearing Date (Licensee Requested)	17 weeks to 52 weeks	32 Weeks	33 Weeks	N=23

*The lag times for 4 of the 74 cases were more than 14 weeks.

Outcomes. Table 17 summarizes the outcomes of the FY 01 sale-to-minor cases. As noted earlier, in most cases, the BLC issues an Offer and Compromise of a fine for first and second offenders. For licensees with two or more previous offenses, the BLC orders an establishment to a show cause hearing to show why their license should not be suspended or revoked.

**TABLE 17
OUTCOMES OF FY 01 SALE-TO-MINOR CASES**

Outcomes	Number of Cases	
	Number	Percent of Total
Fines	78	82%
Suspension	7	7%
Revocation	0	0%
Dismissal	6	6%
Case Still Pending*	4	4%
Total	95	100%

*One licensee has not indicated whether he will take the offer and compromise, and three licensees are waiting to appear at their scheduled show cause hearing.

Table 18 shows the fines paid as a result of FY 01 sale-to-minor violations. The data show that licensees paid a total of more than \$100K in fines. The table 18 reflects the BLC's practice of most often imposing a \$1,000 fine on first-time offenders and a \$2,000 fine on second offenders. All fine revenue is deposited in the General Fund.

**TABLE 18
FINES PAID IN FY 01 SALE-TO-MINOR CASES**

Amount of Fine	Number of Cases	Total Fine Revenue
\$500	2	\$1,000
\$1,000	57	\$57,000
\$1,250	1	\$1,250
\$1,500	1	\$1,500
\$2,000	12	\$24,000
\$3,000	3	\$9,000
\$5,000	1	\$5,000
\$10,000	1	\$10,000
Total	78	\$108,750

*For 1 of the cases settled through Offer and Compromise, the penalty was suspension of the establishment's liquor license instead of a fine.

Table 19 summarizes the results of the 27 show cause hearings held on FY 01 sale-to-minor violations. These represented a mix of hearings mandated by the Board and requested by the licensees. 15 of the hearings resulted in fines being imposed on the licensees and six resulted in a license suspension; six cases were dismissed.

Of the six FY 01 cases dismissed, the BLC dismissed five because the County's witnesses did not show up for the show cause hearing. County witnesses include the police officer(s) who wrote the police report on the violation and the underage buyer(s) who participated in the compliance check operation.

In all seven cases in which the BLC suspended an establishment's liquor license, the establishment had at least two prior sale-to-minor violations. No establishments with two or more sale-to-minor violations received a fine instead of suspension for their next violation.

**TABLE 19
OUTCOMES OF SHOW CAUSE HEARINGS HELD ON FY 01 SALE-TO-MINOR CASES**

Outcomes	Number of Cases	
	Number	Percent of Total
Fines	15	56%
Suspension	6	22%
Revocation	0	0%
Dismissal	6	22%
Total	27	100%

3. Criminal Penalties: Process and Outcomes

Under State law, it is a criminal (misdemeanor) offense in Montgomery County for a licensee or any employee of the licensee to sell, furnish, or serve alcoholic beverages to persons under the age of 21. Violators are subject to a maximum fine of \$1,000 and/or imprisonment up to two years.⁶

The authority for criminally prosecuting the individual clerk or server who sold alcohol to an underage person resides with the State's Attorney and the judicial system. This section describes the process and outcomes related to pursuing criminal penalties for violating the alcohol age-of-sales laws.

⁶ State law reference: Article 2B, Section 12-108

The Process

State law does not currently authorize law enforcement officers to write a criminal citation (i.e., a ticket) for selling alcohol to an underage person. Instead, an officer must initiate criminal charges for this offense by submitting a report and request for filing charges to a District Court Commissioner.⁷

By law, the District Court Commissioner decides whether there is probable cause for charging the clerk/server with selling alcohol to a minor. Charging documents are sent to the Police Department for service, and then to the Office of the State's Attorney (SAO).

Within the SAO, cases that involve the sale of alcohol to underage persons are assigned to the District Court Team, where each case is assigned to an Assistant State's Attorney for review. The Assistant State's Attorney reviews the charging documents and decides the formal charge for each case. During the pre-trial period, consultation often occurs between the prosecutor and the defendant and/or the defendant's attorney (or the public defender). In some cases, a tentative plea bargain agreement is reached. If the parties reach a tentative agreement or settlement, the Assistant State's Attorney will ask the judge for a binding agreement. If the parties cannot reach an agreement, the case goes to trial.

Criminal cases involving the sale of alcohol to an underage person are heard in District Court. The District Court's current practice is to set cases for a first court date within 45 days of the reported incident. When a case is called in the District Court (and assuming there is no continuance), one of the following happens:

- The case proceeds to trial, i.e., the Assistant State's Attorney presents the State's case and the defendant's attorney presents the defendant's case;
- The Assistant State's Attorney and the defendant's counsel present the results of a proposed plea bargain agreement to the judge;
- The defense counsel requests a jury trial for the defendant in Circuit Court;
- The Assistant State's Attorney requests that the case be placed on hold for an indefinite period of time (this is known as being placed on the stet docket);
- The Assistant State's Attorney informs the court that the State does not want to prosecute the case (this is known as a nolle prosequere). Such situations may involve a negotiation for the defendant's agreement to perform an agreed upon number of hours of community service.

⁷ Filing for criminal charges is a time consuming process. County officials have discussed that it would be a more efficient use of officer and Commissioner time to allow officers to write a criminal citation for a sale-to-minor offense. Legislation to make this possible may be introduced during the 2002 General Assembly session.

In terms of case disposition, the judge may find the defendant guilty, but also grant him/her "probation before judgement (PBJ)." In cases where a PBJ is granted, the defendant is placed on supervised or unsupervised probation. As indicated above, the maximum penalty is a maximum fine of \$1,000 and/or imprisonment up to two years.

Outcomes

Data on the disposition of District Court cases involving the sale of alcohol to an underage person are not readily available. At OLO's request, Department of Information Technology staff conducted a special inquiry of the County's criminal justice data system (CJIS), and provided the following summary data.

Between July 1998 and September 2001, 121 persons were charged criminally with selling alcohol to a minor. Of the 116 cases resolved as of November 2001, CJIS records show that:

- 103 cases were nolle prossed;
- Eight defendants were found guilty (7 of these 8 defendants received a Probation before Judgement disposition);
- Four cases were dismissed; and
- One defendant was found not guilty.

**TABLE 20
DISPOSITION OF CRIMINAL SALE-TO-MINOR CASES
JULY 1998 - SEPTEMBER 2001**

Disposition	Number of Cases	As Percent of All Dispositions N=116
Nolle prosequi*	103	89%
Guilty**	8	7%
Dismissed	4	3%
Not Guilty	1	Less than 1%
Total	116	

*As noted below, in 83 of the 103 cases that were nolle prossed, the individual charged with selling alcohol to a minor completed community service as part of the case disposition.

**In 7 of these 8 cases, the disposition was a Probation before Judgement. Six of the seven defendants who got PBJs were placed on unsupervised probation.

85 of the 103 individuals whose cases were nolle prossed completed community service, almost all (91%) through the Department of Correction and Rehabilitation's Alternative Community Service Program. The other 9% completed private community service. Of these persons, the largest cohort (42%) completed 50 hours of community service, another 37% completed between 24 and 40 hours. There was no further information available on the remaining 18 nolle prossed cases.

Eight defendants charged with selling alcohol to a minor were assessed fines (the 7 PBJs and 1 guilty disposition). The fines assessed ranged from \$95 to \$1,000, the average fine was \$437.

TABLE 21
HOURS OF COMMUNITY SERVICE COMPLETED BY INDIVIDUALS CHARGED WITH
SELLING ALCOHOL TO A MINOR
JULY 1998 - SEPTEMBER 2001

Number of Individuals	Hours of Community Service Completed	Percent of Total
1	8 hours	1%
14	24 hours	18%
3	32 hours	4%
1	36 hours	1%
16	40 hours	14%
7	48 hours	9%
32	50 hours	42%
5	60 hours	4%
5	80 hours	5%
1	100 hours	1%
Total: 85 persons		100%

4. Feedback from Licensees

This year, there were approximately 820 alcoholic beverage licenses issued in the County by the Montgomery County Board of License Commissioners (BLC). This represents a mix of different types of licenses, e.g., on sale only, off sale only, on and off sale, beer and light wine, beer, wine, and liquor, etc. Liquor stores owned by Montgomery County are not licensed by the County BLC.

During October through December of 2001, OLO staff interviewed (either in person or by telephone) approximately 20 licensees. The purpose of these interviews was to solicit the licensees' feedback about the enforcement of alcohol age-of-sales laws in the County.

Comments received were wide and varied. Some of the licensees interviewed had no direct experience with the County's compliance check program, and could only speak about the program to the extent they had heard about it from other licensees. Other licensees had had extensive experience with compliance checks in their own establishments, and based on their experience had either compliments or criticisms (or both) to offer.

There is nearly unanimous agreement that compliance checks conducted by using underage buyers are an acceptable form of enforcement as long as they are done "fairly." Most licensees described a "fair" compliance check as one where the underage buyer clearly looks under 21 years of age, does not present false identification, answers all questions truthfully, and does not try to play tricks (i.e., distract the clerk) to encourage the sale to occur.

Other views shared by most of the licensees who had direct personal experience with one or more compliance checks in their establishments were that:

- Establishments that are found repeatedly selling alcohol to underage persons should be fined heavily; it is reasonable for the County to target such places for follow-up compliance checks.
- Licensees should be informed when their establishment passes a compliance check, i.e., refuses to sell alcohol to an underage buyer. Only informing licensees when their establishments fail a compliance check does not give the licensees feedback about what they are doing right.
- If a licensee has a good record of not selling alcohol to underage buyers, this record should be taken into account by the Board of License Commissioners when/if the licensee's establishment is ever charged with selling alcohol to a minor.
- Licensees would like more information about how the County conducts compliance checks, e.g., the County's protocol, how establishments are selected, the County's process for pursuing administrative/criminal penalties.
- Licensees should be informed about an illegal sale on their premises at the time of the violation, but respectfully request that the County not make a law enforcement "scene" that disrupts their business;
- Too much time elapses between the time an incident occurs and the time that the Board of License Commissioners follows up with administrative licensing action, especially with respect to the scheduling of show cause hearings.
- Fines paid by licensees for sale-to-minor violations should go towards improved training classes and other alcohol prevention techniques.

Licensees held decidedly mixed views about what constitutes an appropriate penalty for selling alcohol to an underage person, and whether criminal charges should be pressed against the individual server/clerk who made the sale. Several licensees also questioned the County's motive in conducting compliance checks; as one licensee put it, "Is the County trying to bust licensees and raise revenue or find out if businesses are operated correctly?"

CHAPTER E: COMPARATIVE INFORMATION

This chapter presents comparative information about the enforcement of alcohol age-of-sales laws in three parts:

- Part 1 provides a general perspective on enforcement of laws regulating alcohol sales to minors and the arguments for pursuing administrative vs. criminal penalties.
- Part 2 summarizes the compliance check practices in a sample of local area jurisdictions,
- Part 3 provides information on the administrative penalties adopted by ABC boards in Oregon, Nebraska, New York, California, and Virginia for selling alcohol to a person under 21.

1. Enforcement of Laws Regulating Alcohol Sales to Minors - General Information

All 50 states and the District of Columbia now have a minimum drinking age of 21 years. However, statutory language and practices for administering and enforcing the law vary considerably across the country.

The comparative data that are available suggest that, in most jurisdictions, the enforcement of laws regulating alcohol sales to minors is minimal. A 1995 study by Wagenaar and Wolfson analyzed patterns of criminal and administrative enforcement of the legal minimum age for drinking across 295 counties and four states: Kentucky, Michigan, Montana, and Oregon. (Wolfson et al, *Public Health Reports*, July-August 1995) The study confirmed low rates of enforcement of the legal drinking age in general, and in particular, found little formal action was taken against those who sell or provide alcohol to underage youth. In sum, the authors concluded that:

- Many counties give no attention to drinking age enforcement at all;
- When enforcement action taken, it was typically focused on individual young drinkers rather than on commercial outlets or the private person that supplied the alcoholic beverages to youth;
- More than one-fourth of all counties examined had no administrative licensing action against any outlet over the three-year period studied; and
- A substantial number of counties made few or no drinking age arrests.

The study did find that rates of enforcement varied with certain characteristics of the jurisdictions examined. In general, higher rates of enforcement were found in counties that had higher general crime arrest rates, higher proportions of unoccupied housing, smaller populations, and larger land areas.

Administrative vs. Criminal Penalties

In most jurisdictions, ABC (Alcohol Beverage Control) agencies and local law enforcement officers share enforcement of the minimum drinking age laws. Across the country, there are mixed views and practices concerning the type(s) of penalties pursued when a licensed establishment is found guilty of selling alcohol to a person under 21 years old. In all states, a violation of the alcohol age-of-sales laws can result in the imposition of an administrative and/or criminal penalty.

Whether any type of penalty works as an "effective deterrent" needs to be examined within the context of how it is used in practice. The research on deterrence shows that an effective deterrent must offer a credible threat that a significant negative consequence will occur. The threat must be seen to be swift and certain, and in order for the deterrent effect to be maintained, the threat must be perceived to continue over time. As one researcher of deterrence theory puts it, "Increasing penalties will have little or no effect when the other elements - swiftness, certainty, and continuity - are not present."¹

Administrative Penalties

The administrative sanctions that jurisdictions across the country can impose on a licensee for selling alcohol to a minor range in severity. Specific penalties on a licensee for a first time offense range from nothing to \$5,000 or a 6-month license suspension. One survey (conducted in the early 1990's by the federal government) reported that ten states (including Maryland) allow licenses to pay fees instead of facing a license suspension. The survey also reported that actual revocation of a license for selling alcohol to a person under 21 years old is "rare".

The main arguments for administrative penalties as the more effective mechanism than criminal action for deterring illegal alcohol sales to minors are outlined below:

- **Administrative penalties offer a credible, potentially severe mechanism for deterring underage sales laws.** Administrative penalties most often impose a financial hardship on the licensee, and in some cases, can result in the loss of the entire business. They also can be structured so that the consequence (financial or otherwise) is perceived to be swift and certain.
- **Administrative actions are typically less complex and less costly than criminal actions.** Administrative licensing action generally requires a lower burden of proof, does not require court/judge time, and can occur in a more timely manner. The pursuit of criminal penalties often runs into clogged court dockets, and long delays. In addition, compared to more serious crimes, prosecutors and judges may see alcohol sales violations as relatively minor offenses.

¹ Source: Pacific Institute for Research and Evaluation, 1999.

- **Administrative penalties target the licensee.** It is argued that the licensees are really the individuals in the best position to prevent future violations, through implementation of management policies and manager/server training. Although criminal penalties target illegal behavior of an individual clerk/server, they do not focus on the management practices that allowed the violation to occur.

Criminal Penalties

Depending on the state, the criminal penalties for selling or otherwise providing alcohol to a minor range in severity from a misdemeanor (punishable by a fine or imprisonment of less than one year) to a felony (punishable by imprisonment for more than one year). Specific penalties include fines (\$50 to \$10,000), jail sentences (maximum of 5 years), to community service, and/or driver license revocation (for minors).

The main reasons put forth for pursuing criminal charges against the individual clerk/server who sold alcohol to an underage person are:

- The person who committed the offense should be held responsible;
- It is not fair to hold the licensee responsible without also holding the individual server accountable; and
- Consistently pursuing criminal charges against the clerk/server acts as a deterrent to other clerks/servers.

Some jurisdictions choose not to pursue criminal charges against the individual clerk/server because of the expense associated with following through on the criminal charges, e.g., prosecutor time, judge/court time. Another reason cited for not pursuing the criminal charges is that, in practice, these cases are often dismissed or settled out of court.

2. Other Compliance Check Programs in the Washington D.C.-Baltimore Area

To learn more about compliance check programs in the Washington D.C.-Baltimore area, OLO conducted a series of telephone interviews with law enforcement and ABC (Alcohol Beverage Control) staff. Table 22 summarizes the information obtained about compliance check programs in:

- Howard County, Maryland;
- Baltimore County, Maryland;
- Prince George's County, Maryland; and
- Fairfax County, Virginia.

The table also contains information about compliance checks conducted by the Maryland State Police, who enforce alcohol age-of-sales laws in various places throughout the State.

In sum, the comparative information obtained about compliance check programs in neighboring jurisdictions showed that:

- Only law enforcement officers staff the compliance check program except in Montgomery County, where both law enforcement officers and civilian inspectors conduct compliance checks.
- The underage buyers used in compliance checks all range in age from 17 to “under 21.” Of the places surveyed, only the State of Virginia and Montgomery County’s Office of the Board of License Commissioners pay their underage buyers.
- Licensees in Montgomery County face the highest potential financial penalty (up to \$20K) for selling alcohol to a minor. In some other Maryland counties, however, the penalty imposed can be both a fine and a license suspension, whereas in Montgomery County it is one or the other. Of the places surveyed, only licensees in Virginia face a mandatory license suspension for a second sale-to-minor offense.
- Programs vary in terms of whether they routinely file for criminal charges against the individual clerk/server who sold the alcohol to an underage buyer. Similar to the Montgomery County Police, the Maryland State Police and ABC inspectors in Virginia (who are also law enforcement officers) indicated that they regularly pursue criminal as well as administrative penalties.
- Finally, when a compliance check is conducted by a Howard County police officer, a Maryland State Police officer, or an ABC inspector in Virginia, the licensee is regularly notified whether a sale of alcohol is made or denied to an underage buyer during a compliance check.

Appendix E-1 (©51) contains additional details about these five other compliance check programs.

**TABLE 22:
COMPLIANCE CHECK PRACTICES IN NEIGHBORING MARYLAND AND VIRGINIA JURISDICTIONS**

Jurisdiction	Who conducts compliance checks?	Age and pay status of underage buyers	Maximum Administrative Penalty Imposed on licensee for sale of alcohol to minor	Are criminal charges pursued against clerk/server?	Under what circumstances is licensee notified about results of compliance check?
Montgomery County, MD	Law enforcement officers, primarily from Montgomery County Police Department's Alcohol Initiatives Unit	Under 21 years old; many are police cadets; all volunteers	\$20,000 fine or license suspension/revocation	Yes (most of the time)	Only if sale of alcohol is made to underage buyer.
	Alcohol Tobacco, Enforcement Specialists (civilian inspectors, employees of the Office of the BLC)	18-20 years old; paid by the hour			
Howard County, MD	Howard County Police officer assigned to do ABC enforcement	18-19 years old; all volunteers	\$2,000 fine or license suspension, or both	Rarely	If sale of alcohol is made or denied to underage buyer.
Baltimore County, MD	Baltimore County Police, primarily officers from the Vice Unit	18-20 year old police cadets; all volunteers	\$2,000 fine or license suspension/revocation, or both	No	Only if sale of alcohol is made to underage buyer.
Prince George's County, MD	Prince George's County Police, combination of patrol and Vice Unit officers	Police cadets under 21 years old; all volunteers	\$5,000 fine or license suspension/revocation, or both	No	Only if sale of alcohol is made to underage buyer.
Maryland State Police	State Police officers assigned to local County barracks	Police cadets 18-19 years old; all volunteers	Varies depending on law in County where violation occurred	Yes	If sale of alcohol is made or denied to underage buyer.
Fairfax County, Virginia	State Police officers hired as Regional Alcohol Beverage Commission Inspectors	17-19 years old; paid by the hour	1 st offense - \$2,000 fine; 2 nd offense - mandatory 10 day suspension and \$2-3,000 fine	Yes	If sale of alcohol is made or denied to underage buyer.

3. Administrative Penalties for Selling Alcohol to a Minor in Nebraska, Oregon, Virginia, and California

In many parts of the United States, alcohol control is a state function and penalties for violating alcohol laws are uniform throughout the state. Some state-level alcohol control boards have adopted penalty matrices, which specify the consequences for different violations, including the sale of alcohol to minors.

The language surrounding how each penalty matrix is applied in practice varies. However, except for where a penalty is mandated, the Alcohol Control Board that determines administrative penalties retains some discretion to vary from the penalty listed in the matrix. For example, the Oregon rules surrounding the use of the matrix read as follows:

“These sanctions are guidelines. If the Commission finds aggravating or mitigating circumstance, it may assess a greater or lesser sanction.” Appendix E-2 (©54) contains a complete copy of Oregon’s Liquor Commission’s Violations and Penalties.

Table 23 summarizes the penalties for selling alcohol to a minor, as listed in penalty matrices adopted in Nebraska, Oregon, Virginia, and California. The financial penalty for a first offense ranges from \$500 to \$6,000. All four states mandate a license suspension of some length for repeat violators. In Oregon and Nebraska, a fourth violation for selling alcohol to a minor results in a license revocation. The length of time during which repeat violations are counted ranges in these four states from two to five years.

TABLE 23
ADMINISTRATIVE PENALTIES FOR ALCOHOL SALE TO MINORS
EXCERPTS FROM PENALTY MATRICES ADOPTED IN NEBRASKA, OREGON, VIRGINIA, AND CALIFORNIA

State	Penalty for 1st Violation	Penalty for 2nd Violation	Penalty for 3rd Violation	Penalty for 4th Violation	Time Period for Counting Repeat Violations
Nebraska	10-20 day license suspension or \$500-\$1,000 fine	Two-day mandatory license suspension & 2,000-\$4,000 fine Or 20-40 day license suspension	5-15 day mandatory license suspension & \$4,000-\$6,000 fine or 40-60 day license suspension	License is revoked	4 years
Oregon	10 day license suspension or \$650-\$1,650 fine*	30 day license suspension or \$1950-\$4,950 fine*	30 day mandatory license suspension	License is revoked	2 years
Virginia	\$2,000 fine	10-day mandatory license suspension & \$2,000-\$3,000 fine	Not Specified	Not specified	5 years
California	\$750-\$6,000 fine or possible suspension or probation	Mandatory license suspension	License may be revoked	Not specified	3 years

* In Oregon, the amount of fine varies by type of establishment, e.g. retail licensees are fined \$65 per day vs. wholesale licensees are fined \$165 per day. In addition, an establishment has the option to purchase age verification equipment in lieu of a license suspension or fine but can only exercise this option during the first or second violation.

** California adopted a three strike law in 1995 where instances of 3 sale to minor violations within 3 years could lead to possible license revocation.

CHAPTER F: OTHER STRATEGIES FOR REDUCING THE COMMERCIAL AVAILABILITY OF ALCOHOL TO MINORS

A repeated theme in the empirical research on ways to reduce sales of alcohol to minors is that no single approach will entirely solve the problem. In addition, it appears that individual approaches (such as compliance checks) implemented and used in combination with other strategies may in fact reduce the incidence of teenage drinking.

The left-hand column of Table 24 (begins on page 58) lists the strategies other than compliance checks that are most commonly used to reduce commercial sales of alcohol to minors. The right-hand column cites the relevant State law (if applicable) and/or summarizes the current use of the strategy in Montgomery County.

**TABLE 24
OTHER STRATEGIES USED TO REDUCE SALES OF ALCOHOL TO MINORS**

Strategy	Relevant State Law Provision, Additional Local Rules, and/or Montgomery County Practices
<p>Restrict the location of outlets licensed to sell alcohol</p>	<p>State law: Article 2B, Section 9-201: Authorizes the BLC to adopt regulations that "limit and restrict, in accordance with a definite standard, the number of licenses which they consider sufficient for any neighborhood;" and to divide the County into districts and prescribe areas in which no licenses may be issued. Article 2B, Section 9-216: Restricts the BLC from issuing any license to sell alcoholic beverages within 750 feet of "any secondary or elementary school, church or other place of worship, public library or youth center sponsored or conducted by any governmental agency." The Board may, however, issue a license 300 feet or more from such places with a unanimous decision by the Board members.</p> <p>The Rules and Regulation adopted by the Montgomery County BLC: Section 3.11: Authorizes the BLC to "set conditions and/or restrictions on the granting of a new, transfer, and/or renewal of any license when it finds this to be in the best interest of public accommodation and required to protect the peace and safety of the community."</p>
<p>Restrict alcohol sales at community events</p>	<p>State Law: Article 2B, Section 7-101: Authorizes the BLC to grant special seven-day Class C license to anyone holding any bona-fide entertainment conducted by any club, society or association at the place described in the license. The special license entitles the holder to exercise any privileges conferred by that class of licenses.</p> <p>The Rules and Regulation adopted by the Montgomery County BLC: Rule 2.5.2: Any temporary Class C license issued by the BLC under Rule 2.5 shall include the entire grounds for outdoor functions for which the license is granted.</p>

Strategy	Relevant State Law Provision, Additional Local Rules, and/or Montgomery County Practices
Restrict the age of alcohol servers and sellers	<p>State law: Article 2B, Section 12-302: Requires that a person must be 18 or older to be engaged in the sale of alcoholic beverages, except that a person must be 21 or older to be engaged in the sale of alcohol by any holder of a Class D (on-sale) beer, wine, and liquor license.</p> <p>The Rules and Regulation adopted by the Montgomery County BLC: Rule 6.2: Clarifies that the law does not prohibit licensees from employing anyone under the age of 18 for any purpose except for the sale or handling of alcoholic beverages and that bussing tables shall not be considered handling of alcoholic beverages.</p>
Server training	<p>State law: Article 2B, Section 13-101: In order to be licensed to sell alcoholic beverages in Maryland, a licensee must complete training in an approved alcohol awareness program. The training is good for four years at a time. In Montgomery County, licensees are further required to have a person in a supervisory capacity who has passed the training on the premises during the hours in which alcohol is sold.</p> <p>The Rules and Regulation adopted by the Montgomery County BLC: Rule 3.13 (b): A licensee who violates the alcohol awareness training requirements is subject to a \$100 fine for a first violation. For each subsequent violation, the penalty is a fine not to exceed \$500 or a license suspension or revocation or both. Rule 3.13 (c): Any licensee, or employee of any licensee who is found guilty by the Board of serving alcohol to a minor (or intoxicated patron) and whose license is not revoked, must take an approved alcohol awareness certification course within 60 days of the date of the show cause hearing.</p>
Keg registration laws	<p>State law: Article 2B, Section 21-106: Any establishment licensed to sell alcohol must abide by the State's keg registration law, which requires special record keeping for the sale of any container that holds four or more gallons of beer; the licensee must affix a uniquely numbered keg registration form to the keg. State law also makes it a civil offense to: possess a keg of an alcoholic beverage that is not registered; to remove/alter a keg registration sticker; or to allow a person under 21 to drink from a keg.</p> <p>The Rules and Regulation adopted by the Montgomery County BLC: Rule 5.16: A licensee who violates the keg registration laws is subject to a fine not to exceed \$100 or a license suspension or revocation, or both.</p>

Strategy	Relevant State Law Provision, Additional Local Rules, and/or Montgomery County Practices
Distinctive licenses for drivers under age 21	The State MVA issues distinctive licenses for drivers under the age of 21 in Maryland. The purpose is to make it easier for sellers of alcohol to identify underage persons and to make it more difficult to develop false licenses.
Point of purchase operations	MCPD's Alcohol Initiatives Unit occasionally conducts point of purchase or "cops in shops" operations. Last year, as part of the County's Holiday Task Force, plainclothes officers checked IDs at the entrances to establishments that served liquor. These operations are organized in cooperation with restaurant management.
Surveillance operations	The MCPD (primarily the Alcohol Initiatives Unit) at times conducts strategically placed surveillance operations outside of establishments that sell alcohol. When a sale of alcohol to a minor is observed and completed, the police can bring charges against the minor for underage possession of alcohol, and against the seller for selling alcohol to an underage person.
Community Coalitions	Established in 1992, Montgomery County's Drawing the Line on Under 21 Alcohol Use (DTL) is a multi-agency, public/private community coalition that focuses on prevention of underage drinking. DTL's activities include educational programs for adults and young people through schools, the media and community groups; alcohol-free activities; advocacy for new laws, policies, and practices to make it more difficult for young people to drink.
Use of driver's license scanners	Some licensees in Montgomery County own and use license scanners, but use of scanners is not required. License scanner technology allows a clerk to scan the barcode or swipe a driver's license through a device, which then indicates whether the license is real (vs. fraudulent) and displays the age of the potential buyer on a small screen. The State of Maryland driver's licenses are currently 100% readable by numerous scanner products that cost between \$500 and \$2,000.*
Warning signs and exterior lights in parking lots at establishments that sell alcohol	<p>The Rules and Regulation adopted by the Montgomery County BLC:</p> <p>Rule 5.2: Licensees will insure that every portion of the licensed premises which is open to the public is illuminated by sufficient natural or artificial light to insure clear visibility and to allow patrons to read a menu or other printed materials.</p>

*ABC agencies in New York, Connecticut and Ohio have formally endorsed the use of license scanner as a way to better detect and deter minors who try to purchase alcohol. In 1999, the State of New York passed legislation that provides retailers who purchased license scanners with an "affirmative defense" if faced with charges of selling alcohol or tobacco to underage persons if "an age verification device was used in the transaction." A similar law was passed in Connecticut in 2001 and Ohio in November 2000. Appendix E-3 (©55) contains details on "affirmative defense" legislation.

In Oregon, first and second-time violators have the option of purchasing a license scanner in lieu of paying a monetary fine for selling alcohol to a minor. Appendix E-4 (©61) contains the Oregon Liquor Commission rule on purchasing license scanners. The ABC in West Virginia is currently considering a rule that allows licensees to pay a reduced fine for selling alcohol to a minor, if the licensee agrees to purchase and use a license scanner.

CHAPTER G: FINDINGS

This chapter presents the Office of Legislative Oversight's findings in two parts:

- Part 1 summarizes research and comparative findings about the commercial availability of alcohol to minors and the enforcement of alcohol age-of-sales laws; and
- Part 2 summarizes findings on how Montgomery County conducts compliance checks and pursues administrative and criminal penalties against those who sell alcohol to persons under 21.

PART 1: RESEARCH AND COMPARATIVE FINDINGS

Finding #1: Many young people under 21 consume alcohol and the prevalence of alcohol use increases rapidly with age. The percent of Montgomery County adolescents who report consuming alcohol is somewhat below that reported either statewide or nationally.

Survey data show significant alcohol use by young people in the United States under the age of 21. National survey data from 2000 show that 22% of all 8th graders, 41% of 10th graders, and half of all 12th graders report consuming alcohol within the past 30 days. About one fourth of 10th graders and one-third of 12th graders also report they engaged in binge drinking within the past month; binge drinking is defined as consuming five or more drinks on one occasion.

The percent of adolescents who report consuming alcohol in Montgomery County is lower than the percent reported nationally. Specifically, according to the 2000 Maryland Adolescent Survey, 15% of 8th graders, 27% of 10th graders, and 44% of 12th graders in Montgomery County report consuming alcohol within the past 30 days. 17% of 10th graders and 28% of 12th graders in Montgomery County also report they engaged in binge drinking within the past month. Across categories, Montgomery County's reported rates of underage drinking are consistently several percentage points below those reported statewide.

Finding #2: Alcohol use among young people is associated with undesirable outcomes, both in the immediate and longer-term.

Alcohol use among young people is associated with impaired school performance, physical abuse, unwanted pregnancies, accidents, and injuries. The early use of alcohol is correlated with higher rates of alcohol dependency later in life. Several recent studies also report that alcohol use by teens is linked to irreparable brain damage.

There is substantial empirical research that documents the effectiveness of the minimum 21 drinking age laws. The national data show a direct correlation between the increase in the drinking age and a reduction in alcohol-related traffic fatalities. The passage of the 21-year old drinking age laws is credited with saving about 1,000 teenage lives each year. In addition, studies have linked raising the legal drinking age to fewer pedestrian deaths, unintentional fatal injuries (not involving motor vehicles) and suicides.

Finding #3: Commercial outlets are not the primary source of alcohol for underage drinkers. However, persons under 21 who attempt to purchase alcohol are often successful.

Underage drinkers obtain alcohol when and where they perceive that alcohol is available and the risks of obtaining it are low. Studies consistently report that adults over 21 are the most common source of alcohol for underage drinkers, and that the frequency of obtaining alcohol from commercial outlets increases with age.

Although commercial outlets are not the primary source of alcohol for persons under 21, empirical research consistently shows that young people who attempt to purchase alcohol are often successful. One of the most widely cited studies of purchasability (involving 1,800 purchase attempts in 900 outlets across 24 cities) found that underage buyers were able to purchase alcohol without any questions asked approximately half the time.

The research is inconclusive as to what characteristics or practices of merchants are associated with an establishment's propensity to sell alcohol to persons under 21. Several studies suggest that the presence of a manager on site and the formal training of all bar staff lead to lower rates of alcohol sales to minors. In addition, off-sale establishments located in malls or residential areas, and off-sale businesses with more than one person in line appear to be associated with increased sales to minors.

Finding #4: Opinion survey research shows strong public support for enforcement of the alcohol age-of-sales laws. Police officers cite competing demands on their time as an obstacle to greater levels of alcohol enforcement.

Opinion survey research evidences a high level of public support for most alcohol control policies, including the enforcement of under-21 drinking laws. One study reported that 83% of all respondents favored assessing financial penalties on persons who provide alcohol to underage persons. Public support for financial penalties is even higher among those surveyed with higher education and higher incomes.

One opinion survey of police officers (across four states) found that most officers know where underage drinkers obtain alcohol in their respective communities. However, officers report that competing demands on officers' time and perceptions of mixed views in the community about strict alcohol enforcement prevent more aggressive intervention by the police.

Finding #5: In many jurisdictions across the country, little attention is paid to the enforcement of laws regulating alcohol sales to minors.

A 1995 study of local government practices confirmed low rates of enforcement of the legal drinking age in general, and in particular, found little formal action was taken against those who sell or provide alcohol to underage youth. The authors concluded that:

- Many counties give no attention to drinking age enforcement at all.
- Enforcement action taken is often focused on individual young drinkers rather than on commercial outlet or private person that supplied the alcoholic beverages to youth.
- More than one-fourth of all counties examined had no administrative licensing action against any outlet over the three-year period studied.
- In addition, substantial number of counties made few or no drinking age arrests.

The study did find that rates of enforcement varied with certain characteristics of the jurisdictions examined. In general, higher rates of enforcement were found in counties that had higher general crime arrest rates, higher proportions of unoccupied housing, smaller populations, and larger land areas.

Finding #6: Across the country, there are mixed views and practices concerning the type(s) of penalties pursued when a licensed establishment is found guilty of selling alcohol to a person under 21.

In most jurisdictions, ABC (Alcohol Beverage Control) agencies and local law enforcement share enforcement of the age-21 laws. In all states, a violation of the alcohol age-of-sales laws can result in the imposition of an administrative and/or criminal penalty.

The administrative sanctions that jurisdictions across the country can impose on a licensee for selling alcohol to a minor range in severity. Specific penalties on a licensee for a first time offense range from nothing to \$5,000 or a 6-month license suspension. One survey reported that ten states (including Maryland) allow licensees to pay fees instead of facing a license suspension. The survey also reported that actual revocation of a license for selling alcohol to a person under 21 years old is "rare".

Depending on the state, the criminal penalties for selling or otherwise providing alcohol to a minor range in severity from a misdemeanor (punishable by a fine or imprisonment of less than one year) to a felony (punishable by imprisonment for more than one year). Specific penalties include fines (\$50 to \$10,000), jail sentences (maximum of 5 years), to community service, and/or driver license revocation (for minors).

Finding #7: Substantial anecdotal evidence and a handful of more rigorously designed research studies indicate that compliance check operations can be effective in reducing sales of alcohol to underage persons.

A repeated theme in the empirical research on ways to reduce alcohol consumption by young people is that no single approach will entirely solve the problem. However, individual approaches (such as compliance checks) implemented and used in combination with other strategies may in fact reduce the incidence of teenage drinking.

Substantial anecdotal evidence and a handful of more rigorously designed research studies indicate that compliance check operations can be effective in reducing sales of alcohol to underage persons. A number of studies evidence that increased rates of compliance with alcohol age-of-sales laws are correlated with the implementation of programs characterized by multiple waves of compliance checks and the imposition of penalties against violators.

Finding #8: Among the strategies available to enforce alcohol age-of-sales laws, compliance checks are a comparatively efficient (i.e., relatively easy, quick, and inexpensive) use of public resources.

Enforcement actions in support of minimum purchase age laws can be targeted either on the seller or the buyer. It is argued that because there are far fewer licensed retail outlets that sell alcohol compared to the number of potential underage buyers, it is a more efficient use of police resources to target the relatively few sellers. In addition, it is generally true that a greater range of sanctions, including administrative licensing action can be taken against the seller.

In addition, compared to other strategies for reducing alcohol consumption by youth, compliance checks are seen as relatively easy to do. It is argued that once a program of regular compliance checks is organized, it is relatively easy, quick, and inexpensive program to implement.

PART II: COMPLIANCE CHECKS IN MONTGOMERY COUNTY

Finding #1: In comparison to many jurisdictions where little attention is paid to underage drinking enforcement, Montgomery County has a national reputation for its focus on this issue. Compliance checks are one of multiple strategies currently used in the County to address alcohol use by persons under 21.

Montgomery County's efforts to reduce underage drinking have been written up in "how to" guides and "best practices" published by the federal Department of Justice and Department of Transportation. In particular, the County has been lauded for:

- Establishing an Alcohol Initiatives Unit in the Montgomery County Police Department that focuses on enforcing alcohol-related laws, managing alcohol-related events, and educating young people and adults about the dangers of illegal underage drinking;
- Developing effective approaches to use when responding to underage drinking parties, e.g., using "controlled dispersal" to prevent the scattering of all of the young people; and
- Establishing a public-private partnership to prevent underage alcohol use in the County. Started in 1992, Drawing the Line on Underage Drinking's goals include educating youth, parents, and other community members that alcohol use by minors is unhealthy and illegal, and expanding alcohol-free activities for youth under 21 years of age.

Finding #2: An effective program of compliance checks requires good coordination among all of the involved agencies. In recent years, gaps in communication and occasional discord between several key offices have hampered the effectiveness of the County's compliance check program.

In Montgomery County, compliance checks directly involve the following Executive and Judicial branch offices/departments:

- Board of License Commissioners;
- Office of the Board of License Commissioners;
- Department of Police;
- Office of the County Attorney;
- Office of the State's Attorney; and
- District Court.

In some cases, other law enforcement agencies (e.g., Office of the Sheriff, Maryland State Police, Rockville City Police, Gaithersburg City Police), the Department of Liquor Control, and/or the Alternative Community Service program run by the Department of Correction and Rehabilitation are also involved.

OLO found evidence of good communication and substantial agreement among some of the involved offices on how to conduct compliance checks and how to follow-up with alleged violators. For example:

- Officers from the MCPD Alcohol Initiatives Unit and attorneys from the State's Attorney's District Court Team have reached agreement about the evidence needed to pursue criminal charges against the individual store clerks/servers who sell alcohol to underage persons.
- A process for constructive communication between and among the Office of the County Attorney, the Office of the BLC, and the BLC exists for resolving legal issues during hearings, and in the writing and review of BLC decision resolutions.

However, OLO found gaps in communication and unresolved issues of disagreement about the compliance check program between the MCPD Alcohol Initiatives Unit and the Office of the BLC, and between the MCPD Alcohol Initiatives Unit and the Commissioners themselves. For example:

- The Office of the BLC and the Alcohol Initiatives Unit have rarely coordinated the timing or location of their respective compliance check operations.
- There have been problems with the timing and receipt of essential written information between the MCPD Alcohol Initiative Unit and the Office of the BLC, e.g., the transmission of police reports, receipt of notices to appear at the BLC's show cause hearings.
- BLC members and officers from the Alcohol Initiatives Unit do not always agree on what constitutes sufficient evidence that a licensed establishment sold alcohol to an underage person.
- The administrative licensing action taken by the BLC against specific establishments is not routinely reported back to the MCPD. This had led to misunderstandings about what happened as a result of officers' underage alcohol enforcement efforts.

In sum, these communication gaps and areas of disagreement have hampered the overall effectiveness of the County's efforts to enforce alcohol age-of-sales laws.

Note: During the course of OLO's study, key representatives from the involved offices embarked upon a process to improve communication and cooperation about compliance checks. For more on this, see the comments from the Chief Administrative Officer, included in Chapter I, beginning on page 85.

Finding #3: The compliance check result data that are available do not constitute a statistically reliable baseline for the rate of underage alcohol sales in the County. There are multiple reasons why the results reported by the Office of the BLC are substantially different from those reported by the Department of Police.

Both the Office of the BLC and the MCPD Alcohol Initiatives Unit report conducting a mix of random and targeted compliance checks in recent years, although neither has had a formal plan for how or when establishments are selected. The Department of Police and Office of the BLC have rarely coordinated either the location or timing of their respective compliance check operations.

Due to changes in staff and inconsistent record keeping practices, the data on Police-sponsored compliance checks are not complete. Although the Office of the BLC maintains comparatively more complete data, OLO also encountered some apparent gaps in BLC office records related to compliance checks.¹

The Office of the BLC started conducting compliance checks using underage buyers in 1992. Office records show that between FY 1998 and FY 2001, BLC inspectors conducted 965 compliance checks across 478 establishments. During this three-year time period, the annual compliance rate (defined as the percent of all establishments that refused to sell alcohol to the underage buyer) reported by the Office of the BLC ranged between 93% and 97%.

The MCPD data that are available show that between FY 00 and November 2001, the Alcohol Initiatives Unit conducted more than 298 compliance checks across 219 establishments. These data show an annual compliance rate that ranged between 35% and 84%.

There are multiple explanations for the different compliance rates reported by the two agencies. In addition to differences in data collection constancy, the most likely reasons are listed below.

¹ It should be noted that during the course of OLO's study period, Office of the BLC staff were able to track down FY 01 compliance check case information that initially was not available.

- **Different times of day.** The MCPD's Alcohol Initiatives Unit typically conducts compliance checks at night and on weekends, while the Office of the BLC (for safety reasons) generally conducts compliance checks between 9:00 AM and 9:00 PM.
- **Different protocol.** Until recently, the underage buyers that worked with the Office of the BLC were instructed to walk out of the establishment if asked for age identification. In comparison, the underage buyers working with the Department of Police are instructed to show their driver's license. (Earlier this year, the Office of the BLC changed its protocol so that its underage buyers now also show their driver's license when asked for identification.)
- **Different staffing arrangement.** One part-time Alcohol Tobacco Enforcement Specialist (working with one underage buyer) conducts compliance checks for the Office of the BLC. Conducting compliance checks is this staff member's primary responsibility.

In comparison, compliance checks conducted under the auspices of MCPD involve a variety of officers and underage buyers. The six MCPD officers assigned to the Alcohol Initiatives Unit conduct compliance checks as one among many alcohol-related enforcement activities, e.g., sobriety checkpoints, saturation patrols, surveillance operations. In addition, MCPD officers from the District Stations as well as law enforcement officers from the State Police, Cities of Gaithersburg and Rockville, and Office of the Sheriff participate in MCPD's intensive compliance check effort that typically occurs between Thanksgiving and early January.

Finding #4: The County's approach to conducting compliance checks mirrors many but not all of the "best practices" advocated by other jurisdictions that routinely conduct compliance checks.

Many of the compliance check practices followed here in Montgomery County are similar to those touted by other jurisdictions as the "best" way to structure compliance checks. For example, here in Montgomery County:

- Underage buyers are trained to always answer truthfully to any questions asked of them concerning their age, and to avoid the use of false identification or other tricks to encourage an underage sale.
- Licensees are informed when they first receive their license to sell alcohol that compliance checks are conducted here in the County.

- When an establishment sells alcohol to an underage buyer, the clerk/server who made the sale and the manager/licensee (if on site) are promptly informed that the sale took place.
- Some efforts have been made to build community awareness and support for compliance checks through publicizing the results of compliance checks.

However, examples of "best practices" that are not consistently followed in Montgomery County include:

- All potential underage buyers should be age assessed by a panel of individuals not associated with the compliance check program; underage buyers should be 18 or 19. (Currently, the MCPD Alcohol Initiatives Unit uses underage buyers between the ages of 15 and 20, the Office of the BLC uses an underage buyer between the ages of 18-20.)
- Underage buyers should be paid to provide an extra incentive for attending hearings/court appearances and to reduce the time spent recruiting volunteers. (Currently, the Office of the BLC uses a paid underage buyer, but the MCPD's Alcohol Initiatives Unit only uses volunteers.)
- When an establishment passes a compliance check, a letter of commendation should be sent to the licensee, with a copy to the employee who was on duty and the local liquor board. (MCPD's Alcohol Initiative Unit is in the process of developing such a letter, although it is not yet in use.)
- When a sale-to-minor violation occurs, both administrative licensing sanctions against the establishment owner and criminal charges against the individual clerk/server who made the sale should be pursued. (Currently, the MCPD often but not always pursues both administrative and criminal penalties; the Office of the BLC only pursues administrative penalties.)

Finding #5: To serve as an effective deterrent, the County's compliance check program must send the message to licensees that selling alcohol to an underage person will result in swift, certain, and severe administrative penalties. Data on action taken by the BLC does not evidence that licensees charged during FY 01 with selling alcohol to a minor faced swift punishment. Reasonable persons can disagree as to whether the penalties eventually imposed were certain and severe.

In FY 01, compared to previous years, there was a significant increase in the number of licensees charged with selling alcohol to a minor. A review of BLC office records showed that when the number of reported violations increased the follow up

administrative licensing action often got delayed. Whether the administrative penalty eventually imposed was certain and/or severe is something reasonable persons can disagree upon.

During FY 01, there were 90 sale-to-minor violations reported to the Office of the BLC. This represented a three-fold increase from the 30 sale-to-minor violations reported in FY 00. The notable "spike" appears to have resulted from a combination of an increased number of compliance checks conducted by the MCPD and a higher rate of sales to underage buyers.

The BLC and the Office of the BLC were not positioned to absorb the increased caseload. As a result, during the past 18 months, there often were significant time lapses between the date that a sale-to-minor incident allegedly occurred and the timing of follow-up administrative licensing action. Specifically:

- It took an average of seven weeks from the date of an alleged sale-to minor incident for the Office of the BLC to send out a letter about the incident to the licensee;
- It took an average of 23 weeks from the date of an alleged sale-to-minor incident for a show cause hearing to be held when the hearing was requested by the BLC.
- It took an average of 33 weeks from the date of an alleged sale-to-minor incident for a show cause hearing to be held when the licensee requested a hearing.

In addition, the time frames established for licensees to reply to the Office of the BLC were not strictly enforced. Although letters of Offer and Compromise indicate that licensees must reply to the Office of the BLC within 20 days, Board staff were lenient with licensees about this deadline and often allow them significantly longer than 20 days to actually respond.

The BLC does not have a written penalty matrix for selling alcohol to an underage person. However, the BLC's general practice in recent years has been to fine 1st offenders \$1,000. Until FY 01, the BLC's general practice had been to require all second offenders to appear for a show cause hearing. However, as part of the Board's strategy for dealing with an increased caseload in FY 01, the BLC started to routinely offer second offenders a fine of \$2,000. Third or subsequent offenders are mandated to appear for a show cause hearing, and the penalty imposed on these multiple offenders had usually included a license suspension.

In terms of eventual outcomes for the licensees charged with selling to a minor in FY 01:

- 82% paid a fine and 8% had their license suspended;²
- Of the 76 licensees who paid fines: 55 (71%) paid \$1,000; and 12 (15%) paid \$2,000; one licensee paid a fine of \$5,000 and one licensee paid a fine of \$10,000.

As of December 15, 2001, about 10% of the licensees charged with a sale-to-minor violation that occurred during FY 01 had not paid a penalty. In particular, 6% had their cases dismissed and 4% of the cases were still pending.

Reasonable persons can disagree as to whether the County's record of administrative penalties meets the test of certain and severe punishment. Compared to jurisdictions that do not routinely enforce alcohol age-of-sales laws at all, the County's record of imposing any administrative penalties appears harsh. However, compared to some other jurisdictions and states that routinely impose tougher penalties, especially with respect to more frequent suspensions, the County's fines are average in their severity.

Finding #6: Although the BLC's Rules and Regulations includes procedures for the conduct of show cause hearings, the Board does not strictly adhere to these procedures in practice. Although the BLC's rules state that an Assistant County Attorney may represent the County's position before the Board, to date, this has not occurred.

By law, hearings held by the County's BLC are not required to adhere to the strict rules of evidence. This is consistent with the rules for other quasi-judicial boards that are charged with imposing administrative (not criminal) penalties. In order to find a licensee guilty of violating the alcohol licensing laws, the BLC need only find that there is a "preponderance of evidence" that the violation occurred. This stands in contrast to a criminal proceeding where the court must find that a person violated the law "beyond a reasonable doubt."

State law requires that the Board develop hearing procedures that are approved by the County Council. The Council (by resolution) most recently adopted chapter 4 of the Board's Rules and Regulations in 1995. Rule 9, Conduct of show cause hearing, outlines the order of business at a show cause hearing but describes the protocol as "ordinary but not mandatory." OLO's observations of Board hearings between June and November 2001 found that the order of business outlined in Rule 9 is not strictly followed.³

² No licensee had his/her license to sell alcohol revoked.

³ See Appendix C-4 (©16), Rules and Regulations, Rule 9, Conduct of show cause hearing; that sets forth the order of business at a show cause hearing.

The Board's rules also state that, "In the appropriate case, an Assistant County Attorney may represent the County's position before the Board." It is OLO's understanding that this provision has never been put into practice due to resource constraints in the County Attorney's Office.⁴

OLO's direct observation of Board hearings are that without someone assigned to representing the County's position before the Board, the County's case is not always presented in an organized and comprehensive way. In OLO's view, the lack of a "prosecutor" makes the hearing uneven, with the County's argument that a sale-to-minor violation occurred being under-represented. This is especially true when the licensee has his/her attorney with a well-organized defense lined up.

Finding #7: Some (but not all) sale-to-minor violations result in a criminal charge being filed against the individual clerk/server who made the sale. In almost all cases, sale-to-minor criminal charges have been nolle prossed in return for the defendant's agreement to complete between 24-50 hours of community service.

Data on the disposition of District Court cases involving the sale-of-alcohol to an underage person are not readily available. At OLO's request, Department of Information Technology staff conducted a special inquiry of the County's criminal justice data system (CJIS), and provided the following summary data.

Between July 1998 and September 2001, 121 persons were charged criminally with selling alcohol to a minor. Of the 116 cases resolved as of November 2001, CJIS records show that:

- 103 cases were nolle prossed;
- Eight defendants were found guilty (7 of these 8 defendants received a Probation before Judgement disposition);
- Four cases were dismissed; and
- One defendant was found not guilty.

85 of the 103 individuals whose cases were nolle prossed completed community service, almost all (91%) through the Department of Correction and Rehabilitation's Alternative Community Service Program. The other 9% completed private community service. Of these persons, the largest cohort (42%) completed 50 hours of community service, another 37% completed between 24 and 40 hours.

⁴ The rules also state that at no time will the Board's legal advisor represent the County before the Board." In other words, it would need to be a different Assistant County Attorney than the one assigned as the BLC's legal advisor.

Finding #8: Under the existing structural arrangement and current practices, County-owned liquor dispensaries do not face the same administrative consequences as private retail establishments for selling alcohol to an underage person.

The County's Board of License Commissioners does not license County-owned liquor dispensaries (stores). When a sale to minor occurs in a County-owned liquor store, under current practice, the administrative consequences are different than they are for private retail establishments.

As noted earlier in this report, State law (Article 2B, Section 15-203(d)(6)) provides that for purposes of enforcing the alcohol age-of-sales laws, a manager of a County liquor store or an individual with whom the County's Department of Liquor Control (DLC) contracts with to operate a retail outlet are deemed licensees. The law further provides that an individual working in a County-owned store sells alcohol to a minor, "Is subject to fine and suspension or revocation of employment by the Board of License Commissioners in the same manner as a licensee or employee of a licensee. . . "

OLO understands that, to date, the Board of License Commissioners has deferred to the DLC to continue internal administrative sanctions against the individual clerk who made the sale of alcohol to minor. When a compliance check in a County liquor store results in a sale of alcohol to the underage buyer, the police event report is sent to the Office of the Board of License Commissioners. The Executive Director of the Office of the BLC reviews the report, attaches a cover memo, and forwards it to the Director of the Department of Liquor Control.⁵

According to DLC staff, there have been six incidents in the past two years in which a clerk at a County-owned liquor store sold alcohol to an underage buyer as part of a compliance check operation. DLC reports that in each of these cases, the individual clerk was fined \$500. DLC also reports that, as of this writing, five of these six clerks charged no longer work for DLC. DLC recently changed its procedures so that a clerk found selling alcohol to an underage person will, in the future, face a fine equal to one week's salary.

⁵ When the police also pursue criminal charges against the individual clerk who made the sale, the procedure is the same for County-owned stores as it is for private retail outlets.

Finding #9: The licensees interviewed view compliance checks as an acceptable form of enforcement as long as they are done “fairly.” Licensees offer a mix of compliments and criticisms of the County’s current compliance check program.

Most licensees described a "fair" compliance check as one where the underage buyer clearly looks under 21 years of age, does not present false identification, answers all questions truthfully, and does not try to play tricks (i.e., distract the clerk) to encourage the sale to occur.

Other views shared by most of the licensees who had direct personal experience with one or more compliance checks in their establishments included that:

- Establishments that are found repeatedly selling alcohol to underage persons should be fined heavily.
- Licensees should be informed when their establishment either passes or fails a compliance check. Only informing licensees when their establishments fail does not give the licensees feedback about what they are doing right.
- If a licensee has a good record of not selling alcohol to underage buyers, this record should be taken into account by the Board of License Commissioners when/if the licensee's establishment is ever charged with selling alcohol to a minor.
- Licensees would like more information about how the County conducts compliance checks, e.g., the County's protocol, how establishments are selected, the County's process for pursuing administrative/criminal penalties.
- Too much time elapses between the time an incident occurs and the time that the Board of License Commissioners follows up with administrative licensing action, especially with respect to the scheduling of show cause hearings.

CHAPTER H: RECOMMENDATIONS

While reducing alcohol sales to minors will not eliminate underage drinking, OLO recommends that the County maintain a vigorous program of compliance checks as part of an overall strategy to discourage alcohol consumption by persons under 21.

The empirical research shows that a well-designed compliance check program can increase retailers' enforcement of the alcohol age-of-sales laws and identify retailers who violate the law. Compliance checks are easier, quicker, and less expensive than other strategies to enforce alcohol sale laws.

Compared to other strategies available to enforce the alcohol age-of-sale laws, compliance checks are relatively easy, quick, and inexpensive. The empirical research indicates that a well-designed compliance check program can be an effective way to increase retailers' voluntary enforcement of the alcohol age-of-sales laws, as well as a tool to identify retailers who violate the law.

A well-publicized compliance check program offers another opportunity for the County Government to reinforce a community norm that underage drinking and the sale of alcohol to underage persons is not acceptable. The County's responsibility to strictly enforce the alcohol age-of-sales laws seems particularly important because of the unique role the County has both in selling alcohol and licensing establishments to sell alcohol.

The following recommendations constitute a package of changes aimed at improving the long-term effectiveness and efficiency of the County's compliance check program as a strategy for reducing the sale of alcohol to minors. In particular, OLO recommends some changes be made to how the County plans and conducts compliance checks, and to how the County follows-up with imposing administrative and criminal penalties against violators.

Recommendation #1: Develop an inter-office Memorandum of Understanding for a coordinated approach to conducting compliance checks.

OLO recommends that the Chief Administrative Officer (or designee) facilitate a series of meetings to develop a Memorandum of Understanding (MOU) that articulates a coordinated inter-office approach to conducting compliance checks.¹ The MOU should be developed and signed by representatives from the:

- Department of Police;
- Office of the County Attorney;
- Board of License Commissioners;
- Office of the Board of License Commissioners; and
- Office of the State's Attorney.

¹ OLO sees this process as a continuation of the dialogue that was started in December 2001, as the result of a meeting that OLO convened among representatives from many of the involved offices.

A representative from the Department of Liquor Control and at least one representative from the County's Alcoholic Beverages Advisory Board should also be invited to participate.

The purpose of the meetings would be to agree on the parameters of conducting compliance checks in the County. Specific parameters to discuss and reach accord on include:

- How to select establishments for compliance checks;
- How often and when to conduct compliance checks;
- The protocol for conducting compliance checks, including who should conduct them, how to select underage buyers, and when to inform licensees whether their establishments passed or failed;
- Time frames and process for pursuing administrative and criminal penalties for selling alcohol to an underage person; and
- How to track and report the results of compliance checks and information about penalties imposed on violators.

An important result of these inter-office discussions is for the County to clarify the respective roles of the Police Department and Office of the BLC in carrying out compliance checks. Options for dividing responsibility include:

- Assign 100% of the responsibility for conducting compliance checks to the Police Department or to the Office of the BLC;
- Continue to share responsibility for conducting compliance checks, but with a clear division of labor, e.g., the Police Department assumes responsibility for conducting checks in off-sale establishments while the Office of the BLC assumes responsibility for conducting checks in on-sale establishments; or
- Conduct joint compliance checks, e.g., a Tobacco Alcohol Enforcement Specialist and a police officer are assigned to work together with an underage buyer to conduct compliance checks.

The two tables on pages 77-78 outline OLO's recommended targets for the County's compliance check program. Agreement with OLO's recommendations on these details, however, is far less important than for the line agencies to reach agreement amongst themselves. The line agencies should also adopt a process for ongoing communication about matters that may directly or indirectly affect each other's workloads and collective program results.

A: Recommended Targets for the County's Compliance Check Program

Issue	OLO's Recommended Targets
How to select establishments for compliance checks.	Develop a multi-year Countywide plan for conducting compliance checks. OLO recommends that the plan characterized by a 75% random selection of licensees and a 25% targeted selection. The targeted list of establishments should, for example, include new licensees, repeat violators, and County-owned liquor stores.
Frequency and volume of compliance checks.	<p>Consistent with the research, the County should strive to conduct multiple waves of compliance checks each year. Because compliance checks have workload implications that cross agency lines, the timing and frequency of the waves must be coordinated, especially between the BLC and the Police.</p> <p>Assuming no increases in the level of available resources, OLO recommends that a realistic target be to conduct a minimum of 50 compliance checks a month, which would equate to approximately 600 checks a year. With a combination of random and targeted checks, such a program would mean that every licensee would be subject to at compliance check at least once every two years.</p>
The protocol of conducting compliance checks using underage buyers.	<p>In November 2001, the Police Department's Alcohol Unit issued written protocol for conducting compliance checks. This document provides an excellent starting point for inter-office discussions about step-by-step guidelines for carrying out compliance checks. OLO recommends adding the following elements:</p> <ul style="list-style-type: none"> • Employ some form of age-testing of potential underage buyers to ensure that they appear under 21 years of age. • Conduct compliance checks when young people in the community are known to attempt to buy alcohol, e.g., weekends, evenings, in connection with high school social events. • To avoid recognition by licensees and servers, do not always use the same individuals to conduct compliance checks. • Inform each licensee in writing when his/her establishment either passes or fails a compliance check. • In order to use limited staff time most efficiently, allow for the conduct of compliance checks using only one undercover officer (as opposed to always requiring one undercover officer and one uniformed officer) in low-risk situations; and • Routinely pursue both administrative and criminal penalties when a sale-to-minor occurs. <p>OLO recommends that the County pay its underage buyers. (The Office of the BLC already does but the MCPD does not.) Other jurisdictions' experience shows that paying underage buyers increases their reliability (including showing up at hearings) and reduces time spent on recruitment.</p>
Time frames and process for follow through on administrative and criminal penalties for alleged violators.	<p>To most effectively use compliance check as a way to deter sales of alcohol to underage persons, OLO recommends that deadlines be set and strictly adhered to for the different stages related to imposing administrative penalties. Table B (below) shows the steps and OLO's recommendations for time frames related to administrative licensing action.</p> <p>The time frames for imposing criminal penalties are established by the District Court, which typically sets initial court appearances for within 45 days of an alleged incident.</p>
How to track and report on results of compliance check and consequences imposed on violators.	<p>Keeping good records on the location and results of compliance checks and the consequences imposed on violators is necessary for planning future compliance checks, for good communication among the different actors in the enforcement system, and for generally publicizing the results to elected officials, licensees, parents, and the general public. Publicly reporting the results of compliance checks on a regular basis provides a vehicle for monitoring the success of the enforcement effort. It also builds in an opportunity to strengthen the deterrent effect of the program and reinforce community norms against underage drinking.</p>

B: OLO's Recommended Targets for Administrative Licensing Action

Step in Process	Recommended Time Frame (Maximum)
Office of the BLC receives a copy of the police report documenting alleged STM violation.	Within five business days of the incident.
The licensee receives a formal written communication from the Office of the BLC to licensee about STM incident. This is either a letter of offer and compromise or a notice to appear at a show cause hearing.	Within seven business days after Office of the BLC receives police report. This will place the formal communication to the licensee from the BLC within 12 business days of the incident.
If an O&C letter was sent, the Office of the BLC receives a response from the licensee. Either the licensee pays the fine or requests a show cause hearing.	Within 20 days from the date the letter was sent. (Note: This deadline is already in the BLC's rules and regulations, but in practice is not strictly enforced.)
The show cause hearing is held, (either if requested initially by the BLC or by the licensee in response to a O&C letter.)	Within 100 days of the incident.
The BLC issues its decision as a result of a show cause hearing.	Within one week of the show cause hearing.

Recommendation #2: Implement changes to increase the certainty (both perceived and actual) that licensees who sell alcohol to underage persons will consistently face swift and severe administrative penalties.

Consistent with the empirical research on deterrence, OLO recommends that the County's goal should be to consistently deliver swift and severe penalties to licensees whose establishments sell alcohol to an underage person. This result should not change even during periods of time when a larger than expected number of licensees are charged with selling alcohol to an underage person.

As reported in OLO's findings, in FY 01, compared to previous time period, there was a significant increase in the number of licensed establishments in the County charged with selling alcohol to an underage person. To avoid repeating the experiences of the past 18 months (e.g., significant time lapses between incidents and imposition of administrative penalties; lesser penalties imposed on second time offenders, cases dismissed because witnesses did not show at hearings), OLO recommends the County implement the following changes:

1. Adjust frequency and/or length of Board meetings to ensure that Board action on underage alcohol violations is taken within 100 days of a reported incident. The BLC's current practice of meeting twice a month limits the number of show cause hearings to between four and six each month. As a result, even a small increase in the number of licensees charged with selling alcohol to a minor can quickly increase the time between an incident and the date of a show cause hearing.

Recognizing that the Board's workload is likely to fluctuate from year to year, OLO recommends that the County revise what is expected from individuals appointed to the BLC. Specifically, BLC members should be told (preferably before they apply to serve) that the County expects them to make time for additional hearings, if and when the scheduling of additional hearing is needed to maintain expedient action on alcohol violations. OLO recommends that the Board adopt a target time line of taking action within 100 days of any reported sale-to-minor incident.

Note on BLC Member Compensation. State law establishes a salary for BLC members, but does not stipulate the number of hours associated with serving on the Board. This means that BLC members currently receive \$9,000 (the Chair receives \$10,000) regardless of the number of hearings held. Under the current schedule of two meetings a month (24/year), this salary translates into approximately \$375 per meeting. A typical hearing day begins at 9:00 AM and ends at 4:00 PM; members usually take one hour off for lunch. Given the current compensation amounts, OLO does not believe an increase is required to accompany the change in expectations that is recommended.

2. Assign an Assistant County Attorney to present the County's case in show cause hearings on sale-to-minor violations. The BLC's Rules and Regulations provide that, "In the appropriate case, an Assistant County Attorney may represent the County's position before the Board." Under current practices, an Assistant County Attorney is assigned to advise the Board, but none has been assigned to present the County's charges of alcohol violations to the BLC.

The BLC Chair maintains order during BLC hearings and calls upon the different parties to testify. However, no one is responsible for making sure the County's witnesses will appear and present the necessary evidence, or for logically presenting and defending the various components of the County's case in front of the BLC. Although Commissioners have the opportunity to ask questions, there is no "prosecutor" to carefully cross-examine the licensee or the licensee's witnesses, or to provide direct rebuttal to the defense's arguments. As a result, especially when licensees appear before the Board with an experienced defense attorney (which often happens), the County's case is unevenly represented.

Given the current workload of the Office of the County Attorney, there would likely be a modest fiscal impact of implementing this recommendation. However, OLO recommends it would be a good investment, given how wasteful it is to allocate MCPD, Office of BLC, and Commissioner time only to lose a sale-to-minor case because it is not well presented to the BLC.

3. Adopt a penalty matrix for administrative licensing sanctions associated with different violations. OLO recommends the County's BLC incorporate a penalty matrix into the Board's formal written rules and regulations. OLO strongly recommends that the BLC include a mandatory license suspension as part of the penalty imposed on licensees who commit a second sale-to-minor offense within three years. This would parallel the practice in a number of other jurisdictions known for strict enforcement of alcohol age-of-sales laws, e.g., Virginia, Oregon, Nebraska. The BLC can look to examples of penalty matrices in these places for language that retains Board discretion to vary from the matrix under certain circumstances.

4. Introduce a fast-track process for dealing with repeat offenders. OLO recommends that the BLC introduce a fast-track process for taking administrative licensing action against establishments who are charged with more than two violations of selling alcohol to a minor within three years. Holding expedited hearings for repeat offenders would underscore the County's commitment of taking swift and decisive action against the small number of licensees that repeatedly violate the alcohol age-of-sale laws. The BLC would need to work with the Office of the County Attorney in order to develop a schedule for fast-track hearings that are consistent with notice requirements in State law.

5. Adhere to the Board's current rule concerning alcohol awareness training for a sale-to-minor violation and add the purchase of license scanners as part of the standard penalty. OLO recommends that the BLC begin imposing the penalty that already exists in the BLC's Rules and Regulations that "Any licensee or employee of any licensee found guilty of serving alcohol to a minor must attend alcohol awareness training within 60 days of the show cause hearing."² (Rule 3.13) OLO also recommends that the BLC add a requirement that licensees found guilty of selling alcohol to a minor must purchase a license scanner.

License scanner technology allows a clerk to scan the barcode or swipe a driver's license through a device, which then identifies if the license is real (vs. fraudulent) and displays the age of the potential buyer on a small screen. The State of Maryland drivers' licenses are currently 100% readable by numerous scanner products that cost between \$500 and \$2,000. In New York and Ohio, using an "age verification device" provides licensees with "affirmative defense" when faced with charges of selling alcohol or tobacco to underage persons. In Oregon, first and second offenders are given the option of purchasing a license scanner in place of paying a monetary fine.

Recommendation #3: Increase community awareness of the County's compliance check program, publicize compliance check results, and publicize the penalties imposed upon establishments that sell alcohol to underage persons.

While the law enforcement effort is a core piece of a compliance check program, there will never be enough resources to enable the County Government to constantly be "looking over the shoulder" of all 800+ licensed establishments in the County. One strategy for leveraging the resources that are available is to promote voluntary compliance by maximizing the deterrent effect of the compliance checks that are conducted.

The research on deterrence consistently finds that in order to be effective, there must be a credible threat that a significant negative consequence will occur, the threat must be perceived to be swift and certain, and in order for the deterrent to remain over time, the threat must be perceived to continue. Publicizing how the County's program operates (both on paper and in practice) is essential to the success of the deterrence aspect of the program.

² See Chapter C, The Legal Framework, for additional information about this requirement.

After agreement is reached on the parameters of the County's compliance check program (see Recommendation #1), OLO recommends two separate but related publicity efforts:

- The Office of the Board of Licensees should make a concerted effort to inform all licensees about the County's coordinated approach to conducting compliance checks. OLO recommends that all licensees regularly receive written information about how compliance checks are conducted and up-to-date reports on the penalties imposed upon violators.³
- The County Government (The Public Information Office working in conjunction with the Office of Media Services of the Police Department) should plan a media campaign to the general public about the County's compliance check program. The media campaign could, for example, include a press conference with elected officials, regular press releases about compliance check results, and a standing invitation to reporters to "ride-along" on compliance checks. Appendix E-5 (©63) contains samples of press releases about compliance checks results issued by the Oregon Liquor Control Commission.

To increase general community awareness about the enforcement of alcohol age-of-sale laws, the County should make data on the penalties imposed for selling alcohol to a minor accessible to the public. In Oregon, for example, the liquor board maintains a web site that lists the names of establishments cited for various alcohol-related violations, including underage alcohol sales. The site also posts the penalty imposed (fine paid, number of days license suspended, etc.) upon the establishment for committing each violation.

Recommendation #4: Actively lobby for amending State law to allow a law enforcement officer to issue a criminal citation to a clerk/server for selling alcohol to an underage person.

OLO concurs with the generally held view that pursuing administrative penalties against the licensee (who sets policies within his/her establishment and trains the clerks/servers) is a more effective sanction for selling alcohol to an underage person than pursuing criminal penalties against the individual clerk/server who sold alcohol to a minor. However, OLO also sees value in pursuing criminal charges, especially if State law can be amended to make it less time consuming for officers to do so.

³ Appendix D-6 (©46) contains the most recent Department of Liquor Control newsletter (June 1999) that published the penalties imposed by the BLC upon licensees for alcohol violations.

Under current law, pursuing criminal charges against the individual clerk/server who sold alcohol to an underage person is time consuming and cumbersome. This is because current law does not allow an officer to simply issue a criminal citation for a violation of the alcohol age-of sales laws. Instead, the officer who observed the sale must now appear before a District Court Commissioner to file criminal charges.

There are two options for fixing this situation, both of which involving amendments to State law:

- Maintain the penalty (maximum fine of \$1,000 and/or one year in jail), but add selling alcohol to a minor to the list of violations for which a criminal citation can be issued; or
- Reduce the penalty (to a maximum fine of \$500 and/or 90 days in jail) so that a criminal citation can be issued for selling alcohol to a minor.

To solve the current problem. OLO supports either approach. However, OLO prefers the first option because it does not reduce the penalty that a judge could impose for selling alcohol to a person under 21.

Recommendation #5 : Develop a more equitable approach for dealing with County-owned liquor stores that sell alcohol to an underage person.

Under current practice, County liquor stores do not face the same consequence as private retail establishments for selling alcohol to an underage person. In order to send a consistent message to the community about the importance of not selling alcohol to underage persons, OLO recommends that the County Government begin to impose comparable administrative penalties upon its own stores when a violation of the alcohol age-of-sales law is identified through a compliance check.

When a compliance check in a County liquor store results in a sale of alcohol to the underage buyer, the pursuit of criminal charges against the clerk proceeds just as it would in a private retail establishment. However, in terms of follow-up administrative action, the police event report is sent to the Office of the BLC, which then forwards the report to the Department of Liquor Control. To date, the BLC has not acted on the provision of State law (Article 2B, Section 15-203) that authorizes the BLC to take administrative action (in the form of a fine and suspension or revocation of employment) in situations where a County-owned liquor store sells alcohol to a minor.

According to DLC staff, there have been six incidents in the past two years in which a clerk at a County-owned liquor store sold alcohol to an underage buyer as part of a compliance check operation. In addition to whatever penalty was imposed upon the clerk by District Court (as the result of the criminal charges), each of these six clerks was fined \$500.⁴ DLC recently changed its procedures so that a clerk found selling alcohol to an underage person will, in the future, face a fine equal to one week's salary.

The Department of Liquor Control should be recognized for taking punitive action against the clerks in County-owned stores who actually made the sale of alcohol to an underage person. However, just as a licensee of a private retail establishment is held accountable for the sale of alcohol to a minor in his/her place of business, someone in the management chain above the clerk should be subject to an administrative sanction when a sale-to-minor occurs in a County-owned store. OLO recommends that the Council ask the CAO to recommend what he believes such an appropriate sanction might be.

⁴ DLC also reports that, as of this writing, five of these six clerks charged no longer work for DLC.

CHAPTER I: AGENCY COMMENTS

OLO circulated a draft of this report in January 2002 to the Chief Administrative Officer (CAO) and affected Executive Branch department/offices. A copy was also sent to the State's Attorney. Technical comments received were incorporated into the final report. The written comments received on the draft report from the CAO are included in their entirety, beginning on the following page.

OLO appreciates the time taken by staff to review and comment on the draft report. OLO looks forward to a continuing discussion of the issues raised as the Council reviews the report in the coming months.



OFFICES OF THE COUNTY EXECUTIVE


Douglas M. Duncan
County Executive

Bruce Romer
Chief Administrative Officer

M E M O R A N D U M

February 4, 2002

TO: Karen Orlansky, Director, Office of Legislative Oversight

FROM: Bruce Romer, Chief Administrative Officer 

SUBJECT: Office of Legislative Oversight (OLO) Draft Report 2002-1, Enforcing the Alcohol Age-of-Sales Laws in Montgomery County

This memorandum is in response to your request for comments on the Draft OLO Report 2002-1. Staff from the appropriate departments and the commissioners have reviewed the report for factual content and overall substantive issues as well as the process and data used in the development of the report. I am pleased to advise that without exception, they all report that the cooperative work done was of very high caliber and that the resulting report is, and I quote from one department, "a thorough, masterful report." In deed, you have drafted a very comprehensive analysis of the issues associated with the enforcement of the Age-of-Sales laws in Montgomery County. This report will be of significant benefit as we proceed through the recommendations you have made.

From an overall perspective, we agree with OLO's most basic conclusion: While reducing alcohol sales to minors will not eliminate underage drinking, the County should maintain a vigorous program of compliance checks. The case is clear that underage consumption has serious detrimental societal consequences and that we must continue to aggressively address the problem as well as the consequences.

The only comment I want to make at this time concerning the various findings is that caution needs to be taken in our analysis and reaction to them. The reason for this, as several departments and commissioners pointed out, is the period that much of the reports data is based on was one of extraordinarily high enforcement activity. This does not negate in any way the validity of the findings. However, we should be cautious that we do not over correct for workload related issues if the workload is reduced.

Staff from the respective departments will be available during committee worksessions on the report to discuss the recommendations in detail with your staff and the Council Public Safety Committee. At this time, I would offer the following comments on the recommendations of the report:



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Recommendation #1: The CAO's office will work to develop a more comprehensive level of coordination among all of the departments, Offices, and the Commission. The parameters you have described will provide a good framework for the discussions. Improved cooperation and communication will certainly be among the objectives of these discussions. Concerning the division of responsibility, we reserve judgement as to the appropriateness and the productivity of dividing responsibility.

Recommendation #2: In general, we agree with your recommendation that we should establish a goal of increasing the certainty that licensees who sell alcohol to underage person will face swift adjudication. As to the certainty that punishment will be severe, we would substitute appropriate punishment. When we meet, we will be prepared to discuss the issue of use of a penalty matrix, but our consensus is that the BLC should maintain the discretion to find appropriate consequences. Use of a County Attorney to prosecute cases is seen as appropriate in a very limited number of cases and we will explore asking the BLC to establish guidelines for this option. We concur that the use of high quality scanners would be of substantive benefit. We will explore the legislative changes to address the use of scanners as described.

Recommendation #3: As part of the discussions on developing an MOU, we will also explore the feasibility of increasing awareness of the overall program. As stated above, better communication will be an objective of this effort. This recommendation describes communication at various levels, and all will be examined.

Recommendation #4: We concur that the ability to issue a criminal citation would be an effective addition to the tools we have for enforcement. As to a specific strategy, we will reserve judgment at this time.

Recommendation #5: We concur that a more equitable approach for dealing with County-owned liquor stores that sell alcohol to underage drinkers needs to be implemented. Sanctions beyond those currently assessed against the clerk could accomplish this objective. We will examine the legislative and/or administrative changes required to implement an appropriate way to increase the accountability of the managers of the stores who are the equivalent of the owners of licensed establishments.

Once again, thank you for the opportunity to review the draft report. We look forward to productive discussions of the recommendations. If you have any further questions concerning our comments, please feel free to contact Bill Mooney at 240-777-2539.

OLO Report 2002-1
Enforcing the Alcohol Age-of-Sales Laws in Montgomery County

Appendix

Appendix	Description	Circle Number
A-1	OLO Resource List	©1
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B-1	Prevalence of Underage Drinking in Montgomery County, Maryland Adolescent Survey Results, 1994-2001	©4
B-2	Sample letter of commendation from Oregon Liquor Control Commission to licensee for refusal to sell alcohol to a minor	©5
Chapter C. The Legal Framework		
C-1	October 22, 2001 memorandum from the Office of the County Attorney to the Board of License Commissioners concerning the legal connection between criminal and administrative penalties for selling alcohol to a minor	©6
C-2	Board of License Commissioners: List of current members and dates of Council confirmation	©13
C-3	Article 2B, Subtitle 4, Revocation and Suspension, Section 10-401, Causes (contains list of circumstances under which the BLC must revoke or suspend a license to sell alcohol)	©14
C-4	Council Resolution 13-235, <i>Approval of Board of License Commissioners' Rules of Procedure</i> , adopted August 1, 1995	©16
Chapter D. Compliance Checks in Montgomery County		
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D-2	Alcoholic Beverage Inspection Report form, Montgomery County Board of License Commissioners	©37
D-3	Template for Offer and Compromise letter from Office of the BLC to licensee for alcohol sale-to-minor violation	©38
D-4	Template for letter mandating appearance at a show-cause hearing from Office of the BLC to licensee for alcohol sale-to-minor violation	©40
D-5	Sample BLC decision resolution for sale-to-minor violation that occurred in March 2001	©42

D-6	Most recent Department of Liquor Control newsletter that list penalties imposed by the BLC upon licensees for alcohol violations	©46
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E-5	Press Releases about compliance check results issued by the Oregon Liquor Control Commission	©63

**Office of Legislative Oversight Report 2002-1
Resource List**

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Prevalence of Underage Drinking in Montgomery County
Maryland Adolescent Survey Results 1994-2001

		6 th Grade			8 th Grade			10 th Grade			12 th Grade		
		Ever Used	Last 30 Days	Last 12 Months	Ever Used	Last 30 Days	Last 12 Months	Ever Used	Last 30 Days	Last 12 Months	Ever Used	Last 30 Days	Last 12 Months
Beer, Wine or Wine Cooler	1994	13.10	6.7	8.9	43.3	25.8	38.3	57.9	36.6	51.6	72.7	49.0	66.3
	1996	13.7	6.4	11.8	36.2	20.3	32.7	50.0	32.3	47.0	75.0	51.5	69.7
	1998	8.7	4.2	7.2	29.9	16.5	24.9	54.9	34.7	48.4	67.6	46.0	62.7
	2001	5.5	2.3	3.6	28.5	14.3	25.1	48.8	24.7	42.9	63.7	39.5	57.0
Liquor	1994	5.10	2.5	3.8	31.5	17.9	27.40	38.9	22.6	34.3	60.9	34.0	55.2
	1996	5.1	2.1	4.2	23.8	12.2	22.7	38.1	25.6	35.9	65.2	38.1	50.0
	1998	4.4	1.8	4.0	16.9	9.6	14.8	46.4	30.2	41.3	62.2	37.2	56.3
	2001	3.1	0.7	2.1	16.5	8.1	13.8	37.8	19.6	35.3	55.2	35.3	49.3
Five or More servings of alcohol	1994	4.40	2.1	3.2	18.5	12.9	16.80	30.7	18.6	28.0	49.9	30.4	44.8
	1996	3.7	1.2	2.9	14.2	7.7	11.5	29.0	16.6	26.1	56.2	35.5	58.6
	1998	4.4	2.9	3.1	13.0	7.5	9.7	33.5	23.6	29.8	50.7	31.3	45.7
	2001	3.6	2.3	3.3	10.9	5.8	8.2	28.9	16.6	26.7	44.1	27.5	37.2



Oregon

John A. Kitzhaber, M.D., Governor

Liquor Control Commission

9079 SE McLoughlin Blvd.

Portland, OR 97222-7355

(503) 872-5000

1-800-452-6522

TTY (503) 872-5013

XXXXXXXXXX
XXXXXXXXXX
XXXXXXXXXX

Dear Licensee:

I am please to notify you that on _____ at about _____ your employee
_____ refused to sell alcohol to a person who was under the age of 21. This minor
was working with the Oregon Liquor Control Commission (OLCC) as a minor decoy. The
OLCC uses people under 21 years of age to measure your compliance with laws related to
checking identification and refusing sales of alcohol to people who are under the age of 21.

We at OLCC wish to congratulate you and your staff for not selling alcohol to our minor decoy.
If you have any questions about this visit or our minor decoy program, please contact _____
at _____.

Sincerely,



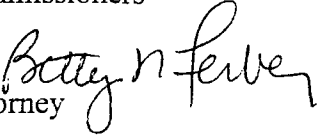
OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: Board of License Commissioners

FROM: Betty N. Ferber 
Associate County Attorney

DATE: October 22, 2001

RE: Grand Billiard Club – Motion to Dismiss Show Cause Hearing for alleged Sale to Minor
Effect of Nolle Prosequi on the Board's ability to impose administrative sanctions for a violation of Article 2B

Licenseses for New Press for Success, Inc., T/A Grand Billiard Club are charged with selling alcohol to a minor. A show cause hearing on the charge is scheduled for November 15, 2001. Licensees assert that the show cause hearing should be dismissed because criminal charges against the licensees' employee, who is alleged to have sold alcohol to the minor, were dropped by the State's Attorney. Therefore, the licensees claim, the Board has no jurisdiction to hear the show cause hearing. The basis for this claim is that a licensee is subject to administrative sanctions by the Board of License Commissioners "only where the licensee or its employee was found guilty or where a 'probation before judgment' was entered for the licensee or employee."

Licenseses' interpretation of the law is mistaken. As explained below, the Board has discretionary power to impose sanctions in all but one situation – where a court has found that an individual charged with sale to minor is not guilty. Since that is not the case here, the Licensees' motion to dismiss should be denied.

Article 2B, Section 12-108, Annotated Code of Maryland, prohibits the sale of alcohol to minors, makes it a misdemeanor to sell alcohol to a minor, and sets forth circumstances which preclude an administrative proceeding against a licensee who has been charged with sale to a minor. The relevant sections of Section 12-108 provide:

Board of License Commissioners

October 9, 2001

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(a) *Generally.* – (1) A licensee licensed under this article, or any employee of the licensee, may not sell or furnish any alcoholic beverages at any time to a person under 21 years of age:

* * *

(2) Any licensee or employee of the licensee who is charged with a violation of this subsection shall receive a summons to appear in court * * * .

(3) (i) A licensee or employee of the licensee violating any of the provisions of this subsection is guilty of a misdemeanor and, upon conviction, suffers the penalties provided by Section 16-503 of this article.

* * *

(iv) Except as otherwise provided in this section, if any licensee or employee of the licensee is found not guilty, or placed upon probation without a verdict, of any alleged violation of this subsection, this finding operates as a complete bar to any proceeding by any alcoholic beverage law enforcement or licensing authorities against the license on account of the alleged violation.

* * *

(f) *Dorchester, Howard and Montgomery Counties.* – (1) This subsection applies in the following jurisdictions:

* * *

(v) Montgomery County.

(2) The granting of probation before judgment to a licensee or employee of the licensee for violating subsection (a) of this section does not bar the Board of License Commissioners from proceeding administratively against the licensee for the violation.

Licensees claim that Heather Colleen Sullivan, a waitress in Grand Billiards, was charged criminally with selling alcohol to a minor. At the request of the State’s Attorney, the court entered a “nolle prosequi.” Rule 4-247 of the Maryland Rules allows the State’s Attorney to terminate a prosecution and dismiss the charge by entering nolle prosequi on the record in open court. This means that the State decided not to go ahead with the case. Entry of nolle prosequi is within the discretion of the prosecuting attorney.

In Maryland nolle prosequi is not an acquittal or pardon of the underlying offense. The normal effect of nolle prosequi will be to preclude further prosecution on the charging document. It does not preclude prosecution for the same offense under a different charging document. Ward v. State, 290 Md. 76, 101 (1981).

In 1988 the Attorney General issued an opinion which addressed the question whether the Board of License Commissioners for Montgomery County could impose administrative sanctions, including fines, on alcoholic beverages licensees who violated Article 2B of the Maryland Code, but had not been convicted of any criminal offense. 73 Op. Att’y Gen. 32 (1988)

Board of License Commissioners
October 9, 2001
Page 3

(copy attached). The Opinion concludes that the Board can impose administrative sanctions on licensees who have violated Article 2B but have not been convicted of a criminal offense, with the single exception that the Board cannot impose any sanction for selling alcohol to a minor if the licensee was found not guilty in criminal proceedings on the same charge.

The Opinion makes clear that under the legislative scheme of Article 2B the imposition of administrative sanctions may in many cases be a more appropriate method of achieving the disciplinary and deterrent goals of sanctions than a criminal proceeding would be. "The circumstances of a particular violation may be such that the case simply does not warrant the imposition of a criminal penalty, yet the 'peace or safety of the community' may necessitate some action.

The Opinion points out that the provisions of Section 12-108 which bar a Board from imposing administrative sanctions on a licensee if the licensee is found not guilty of a criminal charge of sale to a minor, do not mean that only a court can determine whether such sanctions may be imposed. Decisions by the State's Attorney not to prosecute may be reached for many reasons. Construing Section 12-108 to prohibit a Board from taking any action in a case where a nolle prosequi is entered would render the Board powerless to discipline a licensee who in fact engaged in a prohibited sale, solely because another agency found it inadvisable to subject the licensee to the possibility of criminal sanctions. The Opinion further notes that in light of the State's concern with drinking by persons under 21, it is hard to believe that the General Assembly intended that result.

The Opinion concludes that the provision making a finding of not guilty a bar to any civil proceeding against the licensee does not make conviction of the licensee a condition precedent to administrative sanctions. Rather, the Opinion states, "that provision establishes a complete bar to administrative sanction under one narrow set of circumstances: a finding of not guilty * * *. In all other circumstances, the boards have * * * a discretionary power to impose sanctions.

For the above reasons, we recommend that the motion to dismiss be denied.

ALCOHOLIC BEVERAGES—MONTGOMERY COUNTY BOARD OF LICENSE COMMISSIONERS — ADMINISTRATIVE SANCTIONS — WITH ONE EXCEPTION, BOARD HAS AUTHORITY TO IMPOSE ADMINISTRATIVE SANCTIONS ON LICENSEES WHO HAVE VIOLATED LIQUOR LAWS BUT HAVE NOT BEEN CRIMINALLY CONVICTED.

July 14, 1988

The Honorable Brian Frost
Maryland House of Delegates

You have requested our opinion on whether the Board of License Commissioners of Montgomery County (the "Board") may impose administrative sanctions, including fines, on alcoholic beverages licensees who have violated Article 2B of the Maryland Code but have not been convicted of any criminal offense.

For the reasons given below, we conclude that the Board may impose sanctions in those cases, except that it may not impose any sanction for allegedly selling an alcoholic beverage to a person under age 21 if the licensee has been found not guilty or granted probation before judgment on the same charge and the person who induced the unlawful sale has been convicted.

I

Relevant Statutory Provisions

The Board's authority to impose sanctions on licensees is set forth in Article 2B, §§69 and 203. In relevant part, §69(a) provides as follows:

Any license or permit issued under the provisions of this article may be revoked or suspended by . . . the board of license commissioners for Baltimore City, or any county . . . for any cause . . . which in the judgment of the . . . board . . . shall be necessary to promote the peace or safety of the community in which the place of business is situated, and such license or permit must be revoked or suspended . . . for the following causes: (i) conviction of the licensee or permitted for violation of any of the provisions of this article

Additionally, §69(b) provides that: "[r]evocation and suspension of licenses is also authorized for such other offenses as specified in other

parts of this Article."

Revocation or suspension of a license or permit are not the only sanctions that the Board may impose, however. Under §203(p), the Board "may, in lieu of suspending or revoking an alcoholic beverages license for any cause for which the board is permitted but not required to suspend or revoke a license pursuant to §69 of this article, impose a fine for any such violation," subject to certain conditions. One of those conditions is a determination by the Board "that the public welfare and morals would not be impaired by allowing the licensee to operate during the suspension period and that payment of the fine will achieve the desired disciplinary purposes."

Section 118 provides for criminal prosecution of licensees who make sales of alcoholic beverages to underage persons. In addition, §118(a)(3) places a significant restriction on the Board's power to impose sanctions on a licensee criminally charged with that offense:

If any licensee shall be found not guilty, or placed on probation without a verdict, of any alleged violation of this subsection,¹ this finding operates as a complete bar to any proceeding by any alcoholic beverage law-enforcement or licensing authorities on account of the alleged violation, provided that the person inducing the sale in question has been found guilty by a court under one of the sections of Article 27 of the Annotated Code of Maryland numbered 400 to 403, both inclusive.¹

II

Analysis

On its face, §69 provides for revocation or suspension of an alcoholic beverages license under three sets of circumstances: (i) Under §69(a), revocation or suspension is discretionary "for any cause which in the judgment of the . . . board . . . shall be necessary to promote the peace or safety of the community"; (ii) also under §69(a), revocation or suspension is mandatory for certain designated causes, including conviction of a criminal offense under Article 2B; and, (iii) under §69(b),

¹ The provisions of Article 27 referred to impose criminal penalties on a person under age 21 or other person who, by knowingly misrepresenting the underage person's age or otherwise, induces a licensee to sell alcoholic beverages for consumption by the underage person.

revocation or suspension "is also authorized for such other offenses as specified in other parts of this article."² Thus, by its terms, although §69 requires suspension or revocation for certain enumerated causes including conviction of a violation of Article 2B, it does not make a conviction or other enumerated cause a prerequisite to revocation or suspension of a license in all cases. The Board has authority to impose sanctions in cases other than those specifically enumerated in §69(a) — that is, in cases involving offenses specified in other parts of Article 2B, and in situations that threaten the public "peace or safety."

The distinction between cases giving rise to mandatory sanctions and those giving rise to discretionary authority to impose sanctions is explicitly recognized in §203(p). That provision authorizes the imposition of fines only in cases in which the Board has discretion to determine whether or not to impose the sanction of revocation or suspension. The provisions of §69(a) and (b) and §203(p), read together, thus establish a general scheme of administrative enforcement designed to be adaptable to the varying circumstances in which charges of misconduct may be brought against licensees.

Some cases involve clear misconduct that the General Assembly determined to be so inherently serious that it should always be followed by at least temporary loss of the licensee's privilege to do business. One such kind of misconduct is a conviction for a criminal violation of the alcoholic beverages laws. In other cases, determining

² The causes for which revocation or suspension is mandatory under §69(a), in addition to conviction of an offense under Article 2B, are the following:

- (1) Willful failure or refusal to comply with the provisions of Article 2B or regulations adopted under it;
- (2) Making a material false statement in an application;
- (3) Two or more convictions of the licensee's employees for offenses under Article 2B committed on the licensed premises within two years;
- (4) Possession on the licensed premises of alcoholic beverages on which taxes are due but have not been paid;
- (5) Violation of §110, which prohibits manufacturers, wholesalers, distillers, and the like from holding financial interests in retail establishments or in businesses conducted by retail licensees;
- (6) Willful failure to keep or to allow inspection of records as required by Article 2B;
- (7) Possession of any alcoholic beverage that the licensee is not authorized to sell;
- (8) Suspension or revocation of a permit issued to the licensee by the Federal Alcohol Administration or conviction of the licensee for violating any Federal law relating to alcoholic beverages; and
- (9) Failure to furnish the bond required by Article 2B.

whether revocation, suspension, a fine, or no sanction is most appropriate requires consideration of the particular circumstances of the licensee's misconduct. This category of cases clearly includes those in which the licensee has not been convicted of a criminal violation of the alcoholic beverages laws, but has been found, after an appropriate administrative proceeding, to have violated those laws.³

In some of these cases, the imposition of administrative sanctions may be a more appropriate method of achieving the disciplinary and deterrent goals of sanctions than a criminal prosecution would be. The circumstances of a particular violation may be such that the case simply does not warrant the imposition of a criminal penalty, yet the "peace or safety of the community" may necessitate some sanction. In addition, the administrative proceeding may be more appropriate because it is less burdensome for law-enforcement agencies, as well as the licensee. Accordingly, the availability of administrative sanctions in cases in which criminal proceedings are not desirable comports well with the flexibility of the general scheme for enforcement of the alcoholic beverages laws. Indeed, the provision for discretionary sanctions in §69(a) indicates that the ability to discipline licensees for causes for which criminal penalties either are not warranted or could not be obtained is an integral part of the enforcement scheme.

We think that this flexible scheme of administrative enforcement was not abandoned by the General Assembly in those cases in which the misconduct charged is the selling of an alcoholic beverage to an underage person. To be sure, a finding of not guilty or a grant of probation without a verdict to the licensee, coupled with a conviction of the person who induced the sale, precludes the imposition of any administrative sanction. Put another way, where court proceedings have determined, in effect, that a person other than the licensee was at fault in the making of a prohibited sale, the General Assembly has mandated that the licensee likewise may not be subjected to

³ House Bill 1023 (1988) would have amended §69 to authorize the Board to revoke or suspend a license or impose a fine if the Board found that the licensee or an employee had negligently or willfully violated a provision of Article 2B or a rule or regulation of the Board. It appears that the Board presently has that authority in any case in which it finds that the "peace or safety of the community" is threatened by the violation. House Bill 1023 would also have required the Board to promulgate rules establishing the criteria it would use in determining whether to revoke or suspend a license or to impose a fine. Assistant Attorney General Robert A. Zarroch, Counsel to the General Assembly, pointed out that §203(p)(xiv), which requires the Board to promulgate rules and regulations "necessary to carry out the purposes of this subsection" authorizing the imposition of fines, appears to require the Board to establish those criteria. Letter to Del. Michael R. Gordon (June 1, 1988).

administrative penalties. Thus, where a court acts on a criminal charge under §118, its action is determinative of whether any administrative sanction may be imposed on the basis of the same charge.⁴

However, this does not necessarily mean that only a court may determine whether administrative sanctions are to be imposed in cases of sales to underage persons. On occasion, no prosecution is instituted against an alcoholic beverages licensee despite the existence of evidence that the licensee in fact made a prohibited sale. A decision not to prosecute may be reached for any of a myriad reasons. Construing §118 to prohibit the Board from taking any action in those cases would render the Board powerless to discipline a licensee who in fact engaged in a prohibited sale, solely because another agency found it inadvisable to subject the licensee to the possibility of criminal sanctions. In light of the State's concern with drinking by persons under age 21, we do not believe that the General Assembly intended that result. *See Kaczorowski v. City of Baltimore*, 309 Md. 505, 517, 525 A.2d 628 (1987) (statutes should be construed in light of purpose and objective, avoiding illogical or absurd results).

The statutorily declared general policy underlying the alcoholic beverages laws is to regulate and control all aspects of trade in alcoholic beverages "to obtain respect and obedience to law and to foster and promote temperance." §1(a). Moreover, the General Assembly has determined that:

[S]uch policy will be carried out in the best public interest by empowering the Comptroller of the Treasury, the various local boards of license commissioners and liquor control boards, all enforcement officers and the judges and clerks of the various courts of this State with sufficient authority to administer and enforce the provisions of this article.

§1(a) (2). We think that the General Assembly, having determined that boards of license commissioners should have all needed enforcement authority, did not intend to entirely withdraw discretionary authority from them in an area regarded as of special importance — sales of alcoholic beverages to persons under 21. Accordingly, we do not construe §118(a) to make conviction of the licensee, a condition precedent to administrative sanctions. Rather, that provision establishes a

⁴ That is, under the circumstances described, the board may not impose an administrative sanction. If the licensee is convicted under §118, an administrative sanction is required by §69(a). If the licensee is found not guilty or granted probation before judgment and the purchaser is not prosecuted or is found not guilty or granted probation before judgment, the board may impose an administrative sanction.

complete bar to administrative sanction under one narrow set of circumstances: a finding of not guilty or grant of probation before judgment to the licensee coupled with the conviction of the person who induced the unlawful sale. In all other circumstances, the boards have either a mandatory duty or a discretionary power to impose sanctions.

III

Conclusion

In sum, it is our opinion that the Board of License Commissioners of Montgomery County may impose administrative sanctions, including fines, on alcoholic beverages licensees who have violated Article 2B but have not been convicted of any criminal offense, except that it may not impose any sanction for allegedly selling an alcoholic beverage to an underage person if the licensee has been found not guilty or granted probation before judgment in criminal proceedings on the same charge and the person who induced the sale has been convicted.

J. JOSEPH CURRAN, JR., *Attorney General*

C. J. MESSERSCHMIDT, *Assistant Attorney General*

JACK SCHWARTZ

Chief Counsel

Opinions & Advice

Editor's Note: As a result of Chapter 434 (House Bill 575) of the Laws of Maryland 1988, Article 2B, §118a(X3) no longer requires that the person who induced the sale to an underage person be convicted in order for the licensee's acquittal or probation before judgment to serve as a ban to sanctions.

ALCOHOLIC BEVERAGES

Art. 2B, § 9-202

Editor's note. — Section 2, ch. 383, Acts 1997, provides that the act shall take effect Oct. 1, 1997.

*Subtitle 2. Local Jurisdictions.***§ 9-201. General authority of counties and Baltimore City.**

(a) *Scope of authority.* — The Board of License Commissioners for any county or for Baltimore City by regulation may:

(1) Limit and restrict, in accordance with a definite standard, the number of licenses which they consider sufficient for any neighborhood;

(2) Regulate and limit the use of mechanical music boxes and other sound-making devices; and

(3) Divide the city or county, as the case may be, into districts, and prescribe areas in which no licenses may be issued.

(b) *Appeals.* — Any applicant or licensee feeling aggrieved by any limitation, restriction or prohibition imposed by any board shall be entitled to appeal as hereinafter provided. (An. Code, 1951, § 40; 1947, ch. 501, § 38; 1961, ch. 614; 1989, ch. 5, § 15; 1995, ch. 3, § 3; ch. 4, § 3.)

Editor's note. — Section 3, ch. 3, Acts 1995, approved Mar. 7, 1995, and effective from date of enactment, transferred former § 9-203 of this article to be present § 9-201 of this article and rewrote it.

Section 3, ch. 3, Acts 1995, also transferred former § 9-201 of this article to be present § 9-202 of this article.

Section 3, ch. 4, Acts 1995, approved Mar. 7, 1995, and effective from date of enactment, transferred former § 9-203 of this article to be present § 9-201 and rewrote the section.

Section 4, ch. 4, Acts 1995, provides that "the changes made to Article 2B, § 9-203, Article 88A, § 45 (c) [now see generally §§ 44A through 54], and § 11A-121 (g) of the Real

Property Article by Chapter — (S.B. 10) of the Acts of the General Assembly of 1995 may not be given effect and the changes made to those provisions by § 3 of this Act shall prevail, regardless of the date of final enactment." Senate Bill 10 was enacted as Chapter 3, Acts 1995.

The provisions of this section as rewritten by chs. 3 and 4, Acts 1995, were virtually identical. Pursuant to § 4, ch. 4, Acts 1995, this section is set out above as rewritten by ch. 4, Acts 1995.

Failure to adopt rules. — This section is an enabling law and the failure of a liquor board to adopt rules and regulations does not make the denial of a liquor license arbitrary and capricious. *Lawhorne v. Clinton Liquor Fair, Inc.*, 67 Md. App. 1, 505 A.2d 1343 (1986).

§ 9-202. Allegany County.

(a) *Applicability.* — This section applies only in Allegany County.

(b) *Citizenship requirements.* — (1) Only a citizen of the United States shall have an interest of any kind or character in any business for which a license is issued.

(2) A license may not be issued to any person who is not a citizen of Allegany County.

(c) *Restrictions on location of licensed business.* — (1) A license for Classes A and B beer or beer and light wine or for Classes A, B, and D beer, wine and liquor may not be granted to any person whose location or business is in any part of the County except incorporated towns and cities and communities in which there are not less than 500 bona fide residents within a radius of one mile.

**Montgomery County Board of License Commissioners
Current Membership**

Name	Date Appointment Confirmed by Council	Council Resolution Number
Ann L. Chapman	June 30, 1998	13-1339
Ellsworth Naylor	September 28, 1999	14-289
Samuel T. Mok	September 28, 1999	14-289
Sheila E. Boland	June 27, 2000	14-571
S. Ruffin Maddox Jr.	July 24, 2001	14-967

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(5) The Board of License Commissioners shall hold a hearing on the protest as in the case of an original application.

(6) If an application for transfer is filed and pending with the Board of License Commissioners which meets the residency requirements provided for in § 9-101 of this article, the license shall be renewed for the 1985-1986 renewal period. (1983, ch. 641; 1984, ch. 255; 1989, ch. 5, § 15.)

Subtitle 4. Revocation and Suspension.

§ 10-401. Causes.

(a) *Issuing authority; general provisions.* — (1) In this section "issuing authority" means, as appropriate, the:

(i) Comptroller with respect to licenses or permits issued by the Comptroller's Office; or

(ii) Board of License Commissioners, with respect to licenses approved by them, for Baltimore City or any county.

(2) Any license or permit issued under the provisions of this article may be revoked or suspended by the issuing authority for any cause which in the judgment of the official, court or board, is necessary to promote the peace or safety of the community in which the place of business is situated.

→ (3) The license or permit must be revoked or suspended, except as provided in § 10-402, for the following causes:

(i) Conviction of the licensee or permittee for violation of any of the provisions of the Tax-General Article that relate to the alcoholic beverage tax or the provisions of this article;

(ii) Willful failure or refusal of any licensee or permittee to comply with the provisions of the Tax-General Article that relate to the alcoholic beverage tax or any provisions of this article, or any rule or regulation that may be adopted in pursuance of this article or the provisions of the Tax-General Article that relate to the alcoholic beverage tax;

(iii) Making of any material false statement in any application for a license or permit;

(iv) Two or more convictions of one or more of the clerks, agents, employees and servants of a licensee or permittee under the provisions of this article or the provisions of the Tax-General Article that relate to the alcoholic beverage tax of any violation on the premises subject to the license or permit, within a period of two years;

(v) Possession upon the premises of any retail dealer other than the holder of a Class E, Class F or Class G license of any alcoholic beverage upon which the tax imposed by § 5-102 of the Tax-General Article has not been paid;

(vi) Violation of the provisions of § 12-104 of this article;

(vii) Willful failure of any licensee or permittee to keep the records required by this article or the provisions of the Tax-General Article that relate to the alcoholic beverage tax or to allow any inspections of such records by a duly authorized person;

(viii) Possession of any alcoholic beverage which any licensee or permittee other than the holder of a Class E, Class F or Class G license is not licensed to sell;

Art. 2B, § 10-401 ANNOTATED CODE OF MARYLAND

(ix) Suspension or revocation of a permit issued to any licensee or permittee by the Federal Alcohol Administration, or for conviction of violating any federal laws relating to alcoholic beverages; and

→(x) Failure to furnish bond as required by this article within fifteen days after notice from the Comptroller.

(4) Revocation and suspension of licenses is also authorized for such other offenses as specified in other parts of this article.

(b) *Allegany County*. — In Allegany County the license shall be revoked or suspended following conviction of the licensee or of any one or more of the clerks, agents, employees and servants of a licensee for any violation on the part of any such persons of any of the provisions of this article.

(c) *Anne Arundel County*. — (1) This subsection applies only in the following election districts in Anne Arundel County:

- (i) First;
- (ii) Second;
- (iii) Third;
- (iv) Fourth;
- (v) Fifth;
- (vi) Seventh; and
- (vii) Eighth.

(2) In this subsection “lesser” or “more restricted license” means a license under which the sale of alcoholic beverages of a lower alcoholic content, or of a more limited kind, only may be sold, than were sold under the license ordered transferred, or deemed to be a license having fewer privileges, or one containing more or greater restrictions, than were permitted to be exercised under the license ordered transferred.

(3) After a hearing and upon a finding by the Board of License Commissioners that any licensee or that the operation of any licensed premises, operating under a license issued by the Board, has violated or is violating any provision of this article, the penalty for a violation of which provision requires or permits licenses to be revoked or suspended, the Board may order and direct the licensee to exchange that license for a “lesser” or “more restricted” license instead of ordering the revocation or suspension of the license.

(4) The Board may determine if any license is to be suspended or revoked for the violation of any of the provisions of this section or any other provisions of this article, the penalty for a violation of which provision requires or permits licenses to be suspended or revoked.

(d) *Garrett County*. — In Garrett County, in addition to any other provisions of this article, the license of any person may be suspended for a period of time to be determined by the Board not to exceed 1 year, for any of the following grounds: (1) sale of alcoholic beverages to a person under 21 years of age, (2) possession on the licensed premises by any person of any liquor or wines not purchased from the Garrett County liquor dispensaries, if the Garrett County Liquor Control Board maintains County liquor dispensaries, or (3) sale of alcoholic beverages on Sunday. The decision of the Board in these cases is conclusive.

Resolution No.: 13-235
Introduced: July 18, 1995
Adopted: August 1, 1995

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

Subject: Approval of the Board of License Commissioners' Rules of Procedure

Background

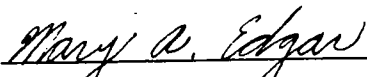
- (1) Article 2B, Section 10-202(m)(4) provides that the Board of License Commissioners of Montgomery County shall adopt Rules of Procedure subject to the approval of the County Council.
- (2) The Board of License Commissioners of Montgomery County have adopted amended Rules of Procedure and have submitted the amended Rules to the County Council for approval.

Action

The County Council for Montgomery County, Maryland, approves the following resolution:

The Board of License Commissioners Rules of Procedure in the form attached here are approved.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Acting Secretary of the Council

CHAPTER 4
HEARINGS AND RULES OF PROCEDURE

§4.0 - Hearings

The Board must hold hearings concerning the applications for licenses, renewals of licenses, transfers of licenses, and show cause hearings authorized under Article 2B of the Annotated Code of Maryland. At all such hearings, at least three (3) members of the Board must be present to constitute a quorum for the transaction of the Board's business.

§4.1 - Definitions

- (a) **Board:** The Montgomery County Board of License Commissioners.
- (b) **License hearing:** A hearing held before the Board pursuant to Article 2B, Section 10-202 of the Annotated Code of Maryland for the purpose of deciding whether to issue, deny, or renew the license of an applicant.
- (c) **Show cause hearing:** A hearing held before the Board pursuant to Article 2B of the Annotated Code of Maryland and/or these Rules and Regulations for the purpose of deciding whether to suspend or revoke the license of a licensee, or to impose a fine in lieu of suspension or revocation.

§4.2 - Notice of Hearing

- (a) **New, transfer, transfer of location, or reclassification of**

license applications.

(1) **Publication** - Before the Board will approve any new, transfer, transfer of location, or reclassification license application, it must publish a notice of such application two (2) times in two (2) successive weeks in each of two (2) newspapers of general circulation in the County. The notice must specify the name of each applicant for the license, the kind of license applied for, the location of the place of business proposed to be licensed, and the time and place fixed by the Board for hearing on the application. The hearing on the application must take place not less than 7 nor more than 30 days after the last date of publication.

(2) **Posting** - In addition to the publication requirement of Section 4.2(a)(1), the Board requires for all new, transfer, transfer of location, or reclassification licensure applications that a suitable sign or notice be posted at least 30 days before the hearing. This notice must be posted in a conspicuous place on the premises described in the application. The notice must specify the class of the license applied for and the time and place fixed for a hearing on the application.

(b) **Show cause hearing** - The Board must notify a licensee at least ten (10) days before the date of a show cause hearing where the licensee is required by law to show cause why the license should not be suspended or revoked. The notice must specify the charges against the licensee and the time

and place of the hearing. The notice must be in writing and may be:

- (1) hand-delivered; or
- (2) sent by both certified mail, return receipt requested,

and first class mail, postage prepaid to the licensee.

§4.3 - Rules of Procedure

Rule 1. Time and place

Hearings before the Board must be held at the time and place as designated in the notice, except for hearings which are continued. All hearings are open to the public, in accordance with the open meetings law.

Rule 2. Official record

The Board must prepare, maintain, and supervise the custody of an official record in each case which must include a verbatim transcript, if one is prepared, and exhibits, if any, which have been submitted during the hearing and at such time as the record may be open for such purposes. Documentary evidence may be received in the form of copies, excerpts, photographic reproductions or by incorporation by reference.

Rule 3. Ex parte communication

(a) This Rule applies to any ex parte or private communication, written or oral, received by a member of the Board, if:

- (1) The communication relates to a contested matter before the Board;

(2) All appellate rights regarding the contested matter have not been exhausted; and

(3) The Board is required by law to make a decision on the matter based on the record before it.

(b) This Rule does not apply to:

(1) legal advice from its attorney or technical advice rendered by an employee of the Board at the Board's request, or

(2) any communication about the status or procedure of a pending matter.

(c) If a member of the Board receives an oral ex parte or private communication, that member must reduce the substance of the communication to writing within reasonable time after receipt of the communication.

(d) The Board must send a written notice to all parties that:

(1) discloses the content of the ex parte or private communication, and

(2) tells whether the Board will consider the ex parte or private communication as a basis for its decision, in accordance with paragraphs (e)(1) and (e)(2).

(e) The Board must include the ex parte or private communication in the record and may:

(1) consider the communication as a basis for its

decision after giving all parties an opportunity to respond to the communication;
or

(2) decide the matter if the Board expressly finds that it has not considered the communication as a basis for its decision.

Rule 4. Evidence

The Board may admit and give appropriate weight to evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, including hearsay evidence which appears to be reliable in nature. The Board may exclude incompetent, unreliable, irrelevant, or unduly repetitious evidence, or produce evidence at its own request. The Board may take official notice of commonly cognizable facts, facts within its particular realm of administrative expertise, and documents or matters of public record.

Rule 5. Cross-examination

Each party has the right of reasonable cross-examination of witnesses who testify, and may submit rebuttal evidence. Repetitious questions and examination on irrelevant matters is not permitted. Cross-examination is subject to reasonable regulation by the Board including designation of specific persons to conduct cross-examination on behalf of other individuals.

Rule 6. Right to counsel

In any case governed by these procedures, all parties have the

right to be represented by themselves or by an attorney of their choice. Within 48 hours after being retained by a party, counsel must file a written notice of appearance with the Board and send copies of the notice to all other parties of record.

Rule 7. Powers of the Board in conducting a hearing

In addition to any of the powers granted to the Board by Article 2B of the Annotated Code of Maryland, the Board is empowered to:

- (a) Require witnesses to be sworn;
- (b) Rule upon motions, offers of proof and receive relevant and probative evidence, exclude incompetent, irrelevant, immaterial or unduly repetitious evidence and give effect to the rules of privilege recognized by law;
- (c) Regulate the course of the hearing and allow the record in hearings to remain open;
- (d) Dispose of procedural requests or similar matters, including requests for a continuance;
- (e) Call, examine, and cross-examine witnesses and obtain and introduce into the record documentary or other evidence;
- (f) Request the parties at any time during the hearing to state their respective positions or theory concerning any issues in the case;
- (g) Take any action authorized by law or necessary to a fair disposition of a case;

- (h) Accept evidence by stipulation of facts;
- (i) Schedule, suspend, or continue hearings to a time and date certain with notification to all parties;
- (j) Upon its own motion or at the request of an affected party, order that witnesses other than a party be excluded from the hearing room until called to testify; and
- (k) Permit additional parties to participate in a hearing as justice may require.

Rule 8. Offer and compromise

When a licensee is notified to appear before the Board for a show cause hearing, the Board may make an offer and recommendation or compromise by which the licensee voluntarily waives the right to the show cause hearing, admits the violation as charged, and agrees to pay a monetary fine, or elects to have its alcoholic beverage license suspended for a specified period, as determined by the Board. All such agreements of offer and compromise must be recorded on a form provided by the Board.

Rule 9. Conduct of show cause hearing

Unless otherwise provided by law, the ordinary but not mandatory protocol for the conduct of a show cause hearing before the Board is as follows:

- (a) Disposition of all outstanding preliminary motions and matters;

- (b) Opening statements of the parties;
- (c) Presentation of factual case of the complaining party; cross-examination of all witnesses;
- (d) Presentation of factual case of the responding party; cross-examination of all witnesses;
- (e) Presentation of factual case of any other interested party; cross-examination of all witnesses;
- (f) Rebuttal evidence of the complaining party; cross-examination of all witnesses;
- (g) Surrebuttal evidence of the responding party; cross-examination of all witnesses;
- (h) Closing arguments.

Any decision by the Board to follow a protocol other than the ordinary protocol must be given to all parties to the show cause hearing at least 2 weeks before the date of the hearing.

Rule 10. Failure to appear

Upon the failure or refusal of a responding party to appear at a hearing, and upon finding that such party had timely legal or actual notice of the hearing, the Board may receive evidence from the complaining party and decide the case as if all parties were present.

Rule 11. Decisions

(a) The decision of the Board must be made on the basis of all evidence of record. The Board must prepare and issue a written resolution which contains a detailed statement of the grounds and findings forming the basis for the decision and conclusions of law, and the vote of each member of the Board on the decision.

(b) A copy of the resolution must be forwarded to the applicant or licensee and to all persons who request one in writing or on the record. The resolution will be hand-delivered; or sent by both certified mail, return receipt requested, and first class mail, postage prepaid. In the case of a denial, suspension or revocation, or fine in lieu of suspension or revocation, of a license, the Board must inform the applicant or licensee in writing of the procedures for an appeal.

Rule 12. Suspension/Revocation Notices. Posting Of - Other Closing Notices Prohibited

If the Board suspends or revokes the license of any retail licensee, the Board must post a notice on the date the suspension or revocation takes effect in a conspicuous place on the licensed premises in a form prescribed by the Board. The notice must indicate that the license has been suspended or revoked by order of the Board, and must include any specific violation of the Maryland State Alcoholic Beverage Laws, and Rules and Regulations of the Board of License Commissioners. A person must not remove or alter the notice

until the suspension period has expired, nor shall any notice of any kind be placed in, or about the premises indicating that the same has been closed for any other reason. The Board must have the premises inspected regularly during the suspension period for compliance with this regulation.

Rule 13. Fine in lieu of suspension or revocation

(a) In lieu of suspending or revoking an alcoholic beverage license for any cause for which the Board is permitted but not required to suspend or revoke a license pursuant to the provisions of Article 2B, Section 10-401 of the Annotated Code of Maryland, the Board may impose a fine for any such violation, subject to the following conditions:

(1) The Board determines that the public welfare and morals would not be impaired by allowing the licensee to operate during the suspension period, and that the payment of the fine will achieve the desired disciplinary purposes;

(2) The fine assessed does not exceed \$20,000.00 as allowed by Article 2B, Section 16-507, for each case; and

(3) All fines collected under this provision must be deposited into the Montgomery County general fund.

(b) The Board, when it acts to impose a fine on the licensee, must prepare and issue a written resolution which must contain a statement of the facts and findings forming the basis for the decision, the vote of each

member of the Board on the decision, and information on how to appeal the decision. A copy of the resolution must be hand-delivered; or sent by both certified mail, return receipt requested, and first class mail, postage prepaid to the licensee.

(c) The Board must issue a notice to stop selling alcoholic beverages to any licensed facility which does not pay the fine assessed by the due date in the show cause resolution. This notice remains in effect until the fine is paid in full or, at the Board's discretion, the notice is rescinded.

Rule 14. Motion for reconsideration

(a) Within ten (10) days after the Board issues a written decision on an application for an alcoholic beverage license or on a matter concerning a licensed premises, an applicant or a licensee may file a motion for reconsideration with the Board.

(b) The Board must at its next session decide by majority vote whether to grant or deny the motion for reconsideration.

(1) If the Board denies the motion for reconsideration, the Board's original decision remains in effect.

(2) If the Board grants the motion for reconsideration, the case is reopened and the Board may:

(i) order that another hearing on the case be scheduled;

(ii) issue a new decision amending its prior decision; or

(iii) retain its original decision.

(c) The filer of the motion for reconsideration must mail or otherwise deliver a copy of the motion to all parties of record.

(d) A motion for reconsideration does not stay the effect of the Board's decision unless the Board orders otherwise.

Rule 15. Appeals

A final decision by the Board on an application for an alcoholic beverage license or on a matter concerning a licensed premises may be appealed to the Circuit Court for Montgomery County, under the applicable Maryland Rules of Procedure governing administrative appeals. An appeal does not stay the effect of the Board's decision.

Rule 16. Stay pending appeal

(a) Upon the filing of an appeal and where there would be no immediate danger to the public health, safety, or welfare, the Board may stay the effect of its [resolution or] decision pending a final determination on appeal.

(b) A written application for a stay of the Board's decision must be filed, by the licensee, no later than 10 days after the date of the decision.

(1) The Board must take up a timely filed written application for a stay of the Board's decision at its next regularly scheduled

meeting and issue its decision on the stay in writing within 5 business days thereafter. Notice of the Board's decision must be either hand-delivered or sent by both certified mail, return receipt requested, and first class mail, postage prepaid to the licensee.

4.4 - Open Meetings

1.0 Notice of Meetings

The Board must give reasonable advance notice of meetings that are subject to the Open Meetings Law pursuant to the provisions of that law. All advance notice must comply with the sign posting and advertising requirements of Article 2B of the Annotated Code of Maryland, Section 10-202.

2.0 Public Attendance

(a) At any open session of the Board of License Commissioners, the general public may attend and observe.

(b) Except when the Board expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, no member of the public attending an open session may participate in the session.

3.0 Disruptive Conduct

(a) A person attending an open session of the Board must not engage in any conduct, including visual demonstrations such as the waving of placards, signs, or banners, that disrupts the session or that interferes

with the right of members of the public to attend and observe the session.

(b) The presiding officer may order any person who persists in conduct prohibited by subsection (a) or who violates any other regulation concerning the conduct of the open session to be removed from the session, and may request police assistance to restore order. The presiding officer may recess the session until order is restored.

4.0 Recording, Photographing, and Broadcasting of Open Sessions.

(a) A member of the public including any representative of the news media, may record discussions of the Board of License Commissioners at an open session by means of a tape recorder or any other recording device if the device does not create an excessive noise which disturbs members of the Board or other persons attending the session.

(b) A member of the public, including any representative of the news media, may photograph or videotape the proceedings of the Board at an open session by means of any type of camera if the camera:

(1) is operated without excessively bright artificial light which disturbs members of the Board or other persons attending the session;

(2) does not create an excessive noise which disturbs members of the Board or other persons attending the session.

(c) A representative of the news media may broadcast or televise the proceedings of the Board at an open session if the equipment used:

(1) is operated without excessively bright artificial light which disturbs members of the Board or other persons attending the session;

(2) does not create an excessive noise which disturbs members of the Board or other persons attending the session.

(d) The presiding officer may restrict the movement of a person who is using a recording device, camera, or broadcasting or televising equipment, if that restriction is necessary to maintain the orderly conduct of the session.

5.0 Recordings Not Part of Record

A recording of an open session made by a representative of the news media or other member of the public, or any transcript derived from such a recording, must not be deemed a part of the record of any proceeding of the Board.

6.0 Closed Meetings

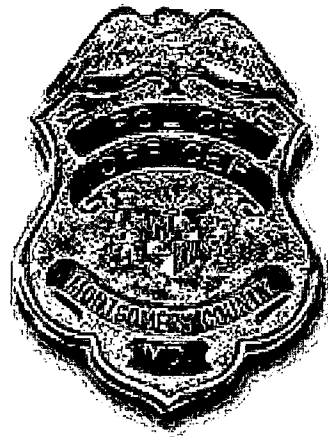
(a) The Board may hold closed meetings as allowed by the Maryland Annotated Code, State Government Article, Section 10-508(a). The Board must approve the closed meeting by a majority vote. The Board must take the vote before the closed meeting and must make a written statement of the reason for the closed meeting, including a citation of the authority under

State law that justifies closing the meeting. If a person objects to the closed meeting, the Board must send a copy of the written statement to the Open Meetings Compliance Board.

(b) Minutes must be taken of the closed meeting which include a list of the topics discussed, the persons present, and each action taken during the closed meeting. The minutes must be carefully worded to avoid disclosing information that would negate the purpose of closing the meeting.

Montgomery County Police Department

Alcohol Initiatives Unit



UUNDERAGE VOLUNTEER

COMPLIANCE CHECKS

OPERATION GUIDELINES

The Underage Volunteer (UV) compliance checks operation allows local law enforcement communities to use persons under 21 years of age to attempt to purchase alcoholic beverages from licensed businesses. Research studies have shown that well-executed, routine underage compliance waves are an effective tool to combat underage alcohol consumption.

SELECTION OF UV:

<i>AGE</i>	At the time of the operation, the UV must not be older than 20 years of age.
<i>APPEARANCE</i>	The UV must display the appearance generally expected of a person under 21 years old, under the actual circumstances presented to the seller of alcoholic beverages at the time of the alleged offence. Male UVs should not be large in stature. Female UVs should wear no (or minimal) make-up and minimal jewelry. Casual or conservative attire should be worn.
<i>WITNESS</i>	The witness should be willing and able to testify at criminal and administrative proceedings. If college students are used, discuss their availability for future hearings.
<i>CREDIBILITY</i>	It is important to use UVs who have never previously purchased or attempted to purchase alcoholic beverages or used or possessed false identification cards. If at all possible, an UV should not attempt to purchase alcohol if he/she would be recognized at the location.

OPERATION:

<i>Underage File</i>	Two files will be created for each underage person used in this operation. The first will be kept in the AIU office and will contain the following items: 1) Photo of UV each time the UV attempts to make purchases; 2) a copy of the UV driver's license or ID card; 3) a copy of their criminal history and information sheet. The file may also contain the license or ID card issued to the UV by MVA for the sole purpose of working with the AIU. The officer conducting the operation will make a second file which will contain a copy of the UV's drivers license, photo of the way they are dressed (full figure and head and shoulder), and a list of all establishments checked during that operation.
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Underage volunteers who have been issued a new ID or driver's license by the MVA for the sole purpose of working with the AIU will only have that ID during the time of the operation. Officers will sign the ID out to the UV and then collect it after the operation. Officers will then secure it back into the UV's file.

Each UV will be issued a distinct UV number. The number will start with the year and then that intern's number (i.e. if this is the first UV for 2002 their number would be UV# 02-01)

PHOTOGRAPH

Photograph the UV prior to the deployment to verify attire and appearance. Be sure to date and time the photograph.

LOCATION

Hours of operation should be the times that underage persons would normally be purchasing alcohol. Use judgment when working in nightclubs. Underage volunteers will not attempt to purchase in locations they are known or frequent.

*INSTRUCTIONS
TO UV*

Instruct the UV to enter the package goods premises, select an alcoholic beverage and place it on the counter with the money.

In clubs or restaurants, they should order a single alcoholic beverage from the waitstaff or bartender.

The UV should either carry his or her own identification card showing the UV's correct date of birth or carry no identification at all. The undercover officer will decide whether the intern should produce an identification card or not.

- (1) An UV who carries identification must present it upon request, to any seller of alcoholic beverages.
- (2) An UV who carries no identification must state his or her actual age and date of birth, if asked.

Under no circumstances should an UV lie to induce a sale. An UV should not remain silent when asked questions about his or her age. An UV should answer truthfully any questions about his or her age, and be polite and courteous at all times.

<i>SURVEILLANCE</i>	The UV should be under constant surveillance by an undercover officer, thus ensuring the UV's safety. This allows the officer to witness the sale of alcoholic beverages and offer supporting testimony. Video and audio surveillance can be utilized where the law will allow.
<i>AFTER THE SALE</i>	(1) <i>Off- sale location:</i> after the sale, the UV should leave the premises with the alcoholic beverage and immediately surrender it to the officer. The UV should be protected from possible confrontation. (2) <i>On-premises location:</i> at the time the UV is served the alcoholic beverage, the officer should immediately take custody of the beverage. Do not allow the UV to exit the premises with the beverage.
<i>IDENTIFY THE SELLER</i>	The undercover officer and a uniformed officer should enter the premises and make contact with the seller. Officers will inform the seller of the violation and obtain all information for the report and charging document. (Civil citation / District Court Summons or physical arrest)
<i>CONTACT THE OWNER OR MANAGER</i>	If the owner or manager is present, inform him/her of the violation. At this time the officer may want to check for other violations on the premises.
<i>EVIDENCE</i>	Alcoholic beverage will be photographed for evidence in accordance with the department's rules.
<i>REPORTS</i>	The UV should prepare detailed notes of the transaction for use in hearings or to prepare reports. The investigating officer will be responsible for completing an Event report along with the Investigator's Expense Log. A copy of the detailed report along with the UV's notes on the transaction should be forwarded to Board of License Commissioners. The investigating officer will obtain all criminal charges against the seller.
<i>*MEDIA</i>	Ensure the local media is contacted about the minor compliance checks program. This gives licensees a notification and may elicit editorial and community support for your agency and program.



Montgomery County, Maryland
BOARD OF LICENSE COMMISSIONERS

JUNE 2000

ALCOHOLIC BEVERAGE INSPECTION REPORT

Appendix D-2

Facility Name: License No.:

Facility Address: Telephone #:

A. LICENSE:

[MCC, S.5.8/Art. 2B, S.10-505]

- 1. Posted
2. Conspicuous
3. Under Glass
4. Framed

B. SOURCE:

- 1. Approved
[MCC, S.6.17 (a&b)/Art.2B, S.15-204b]

C. STORAGE:

- 1. On Licensed Premises
[Art. 2B, S.12-105]

D. BAR/SERVICE OPERATIONS:

- 1. Alcoholic Beverage Bottles Refilled
2. Empty Liquor and Wine Bottles Destroyed/Disposed
3. Labeled

E. MINORS:

- 1. Employed
[Art. 2B, S. 12-302/MCC S.6.2]

F. ALCOHOL AWARENESS TRAINING:

- 1. Certified Person
2. On Premises

G. SALES:

- 1. To Under 21 Patrons
2. To Intoxicated Patrons
3. After Hours

H. MISCELLANEOUS

- 1. (MCC, S)

I. RECORDS:

- 1. Employee
2. BWL Invoices
3. Maintained for years
4. On Premises
5. Available for Inspection

J. BAR SANITATION:

- 1. Bar Glasses Clean
2. Bar Area and Equipment Clean

K. TOILETS & HANDWASH:

- 1. Properly Equipped and Maintained

L. REFUSE DISPOSAL:

- 1. Containers Provided

M. GAMBLING:

- 1. On Licensed Premises

N. KEG REGISTRATION:

- 1. Registration Forms Provided
2. Sticker Affixed
3. On Premise Copy 30 Days

- Routine
Compliance
Notice
Monthly

USE AND OCCUPANCY PERMIT? YES NO

FOOD SERVICE FACILITY LICENSE? YES NO

O.K TO ISSUE A.B.C. LICENSE? YES NO

ENTRIES:

S = Satisfactory
N/A = Not Applicable
V = Violation

Instructions/Comments:

Dear Licensee(s):

You are being charged with a violation of Chapter 6, Prohibited Practices, Section 6.0, Sales to Minors, of the Rules and Regulations of the Board of License Commissioners, Montgomery County Code, Appendix D. You have a right to appear at a hearing before the Board to show cause why your alcoholic beverage license should not be suspended or revoked, or other penalties imposed.

This office received a Montgomery County Alcoholic Beverage Inspection Report/Police Event Report dated XXXX detailing a sale to a minor violation that occurred at the above-referenced facility on XXXXXX. As a result of that incident, you are being charged with failure to comply with Chapter 6, Prohibited Practices, Section 6.0, Sales to Minors, of the Rules and Regulations of the Board of License Commissioners, Montgomery County Code, Appendix D.

This Offer and Compromise notice is being issued to you as a way of resolving this violation. You may admit your guilt, waive your right to a show cause hearing, and pay a One thousand dollar (\$1,000) fine. These charges are part of your file, which would be considered at a show cause hearing.

If you choose to waive the hearing, circle #1 on the attached form, sign the form, enclose a check for \$1,000 made out to Montgomery County, Maryland, and return it with the admission of guilt form within 20 days of receipt of this letter. If you choose to have a show cause hearing, circle #2 on the attached form, sign the form, and return it to this office within 20 days of receipt of this letter.

Sincerely,

Dennis Theoharis
Executive Director

TO THE BOARD OF LICENSE COMMISSIONERS:

I am the sole licensee or am authorized to act on behalf of the defendant licensees. I understand the charges stated in the notice, dated , 2001, and choose the following course of action:

INDICATE FINE OR HEARING OPTION BY CIRCLING #1 OR # 2 BELOW

1. Enclose a check in the amount of **One Thousand Dollars (\$1000)** in full payment of the fine, voluntarily waive my/our right to a hearing, and admit the violation as charged.
2. Request an administrative show cause hearing before the Board.

Signature of Licensee

Printed Name of Licensee

Date

Re:

THIS FORM MUST BE SIGNED BY ONE OF THE LICENSEES

Dear Licensee(s)/Witnesses:

This letter is to direct **ALL LICENSEES AND WITNESSES** to appear before the Board of License Commissioners on DATE at TIME in the First Floor Auditorium, Council Office Building, 100 Maryland Avenue, Rockville, Maryland to show cause why your alcoholic beverage license should not be suspended or revoked, or why other sanctions permitted by law, including but not limited to fines and penalties for alleged violations of the Montgomery County Code, Appendix D, Rules and Regulations of the Board of License Commissioners should not be imposed.

It is alleged that on DATE, a person under 21 years of age was sold, served, consumed, or had in his/her possession alcoholic beverages in violation of the Rules and Regulations of the Board of License Commissioners, Montgomery County Code, Appendix D, specifically Chapter 6, Prohibited Practices, Section 6.0(a), Sales to Minors. A copy of the Montgomery County Police Event Report/incident report is attached hereto and incorporated by reference.

The Board will receive your licensure file as part of the record of the show cause hearing. You may review your file at the Office of the Board of License Commissioners, 16650 Crabbs Branch Way, Rockville, Maryland.

You have the right to summons witnesses to testify on your behalf as well as the right to be represented by an attorney. Should you wish to have a summons issued for a witness, contact Lynn Keller at 240-777-1999. If you choose to have an attorney represent you, he/she must notify the Board of License Commissioners in writing and all other parties as soon as possible. Finally, the hearing will be conducted in accordance with Chapter 4, Section 4.3 of the Rules and Regulations of the Board of License Commissioners.

Pursuant to the Annotated Code of Maryland, Article 2B, Section 16-410, the Board of License Commissioners is authorized to issue summonses for witnesses. If any witness that is summonsed for this case refuses or neglects to attend, once service is obtained, the Board may report this information to the Circuit Court and request that a bench warrant be issued.

Sincerely,

Dennis Theoharis
Executive Director

DT:lk

**BOARD OF LICENSE COMMISSIONERS
FOR MONTGOMERY COUNTY**

Jeffrey Heineman
Amy Galgon
Elizabeth Heineman

The Licensees

RESOLUTION 01-132

Proceedings

On December 6, 2001 the Board of License Commissioners for Montgomery County (the Board) held a hearing to show cause why the Beer, Wine & Liquor License, Class B, On Sale Only, Hotel/Restaurant, issued to Jeffrey Heineman, Amy Galgon, Elizabeth Heineman, for the premises known as Grapeseed, which premises are located at 4865-C Cordell Avenue, Bethesda, Maryland, should not be suspended or revoked, and why other sanctions permitted by law, including but not limited to fines and penalties, should not be imposed for alleged violations of the Montgomery County Code, Appendix D, Rules and Regulations of the Board of License Commissioners as stated in a letter dated August 23, 2001.

At the outset of the proceeding, the licensees admitted the allegations, *i.e.*, that their employee violated the Rules and Regulations of the Board of License Commissioners, Montgomery County Code, Appendix D, Chapter 6, Prohibited Practices, Section 6.0(a), by selling an alcoholic beverage to a minor on March 17, 2001.

The Board then held a disposition hearing to review the applicable facts and determine the appropriate sanction. During the course of that hearing, the Board received testimony and documentary evidence including, among other things, the licensure file and inspection reports.

Evidence Presented

The Board received the following evidence:

Montgomery County Police Officer W. Morrison testified that on March 17, 2001 he was conducting an underage alcoholic beverage detail with Underage Police Intern 00-03. The Underage Police Intern entered Grapeseed, ordered an alcoholic beverage, was not asked for identification, and was served the alcoholic beverage.

Jeffrey Heineman stated a mistake was made, that the server should have carded the Police Intern. Mr. Heineman also testified that his entire wait staff is certified, and that he certifies his staff on a rotating basis.

Findings of Fact

On the basis of the admission and the evidence presented, including the licensure file and the investigative reports, and having had an opportunity to view the witnesses, observe their demeanor, and judge their credibility, the Board finds as a matter of fact, that on March 17, 2001, the licensees, their employees or agents sold alcoholic beverages to to Underage Volunteer 00-03.

Applicable Law

Rules and Regulations of the Board of License Commissioners, Montgomery County Code, Appendix D, Chapter 6, Prohibited Practices, Section 6.0(a), Sales to Minors provides:

§6.0 - Sales to Minors

(a) A licensee, his/her agent(s) and/or employee(s) will not sell, serve, or permit the consumption or possession of any alcoholic beverage to anyone under the age of 21. The licensee, his/her agent(s) and/or employee(s), shall determine that the person to whom the sale or service is made, or who is consuming or possessing an alcoholic beverage, is at least twenty-one (21) years of age prior to the sale, service, possession, or

consumption of any alcoholic beverage. The licensee shall be responsible for any violation of this section.

Decision, Conclusion of Law, and Disposition

The licensees admitted violating the Rules and Regulations of the Board of License Commissioners, Montgomery County Code, Appendix D, specifically Chapter 6, Prohibited Practices, Section 6.0(a), Sales to Minors on March 17, 2001.

Upon a motion by Mr. Mok, and seconded by Mr. Maddox, and unanimously carried by Mr. Mok, Mr. Maddox, Mr. Naylor, Ms. Boland, and Mrs. Chapman, the Board:

1. Determined that the public welfare and morals would not be impaired by allowing the licensee to operate and that payment of a fine will achieve the desired disciplinary purposes.
2. Assessed a fine in the amount of \$1,000 for the March 17, 2001 sale to a minor violation; the fine is due and payable to Montgomery County on or before February 1, 2001.

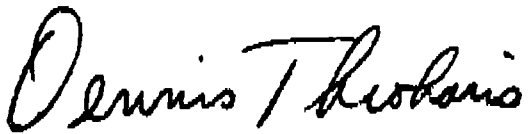
Notice

This decision of the Board may be appealed to the Circuit Court for Montgomery County, Maryland pursuant to the provisions of Article 2B, Section 16-101 of the Annotated Code of Maryland, and Title 7, Chapter 200 of the Maryland Rules of Procedure.

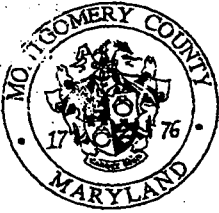
ATTEST:

I, the undersigned, hereby certify that the Board adopted the foregoing Resolution on December 20, 2001.

I also certify that on this 27th day of December, 2001 a copy of the foregoing Resolution was sent by certified mail, return receipt requested, and by regular first class mail, postage prepaid, to the licensed premises, to all licensees, and to counsel of record.

A handwritten signature in black ink that reads "Dennis Theoharis". The signature is written in a cursive, flowing style.

Dennis Theoharis
Executive Director
Office of the Board of License
Commissioners for Montgomery County



DEPARTMENT OF LIQUOR CONTROL

NEWSLETTER

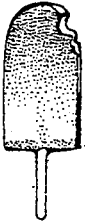
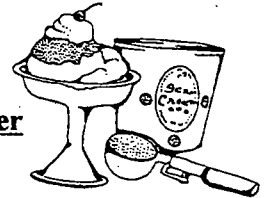
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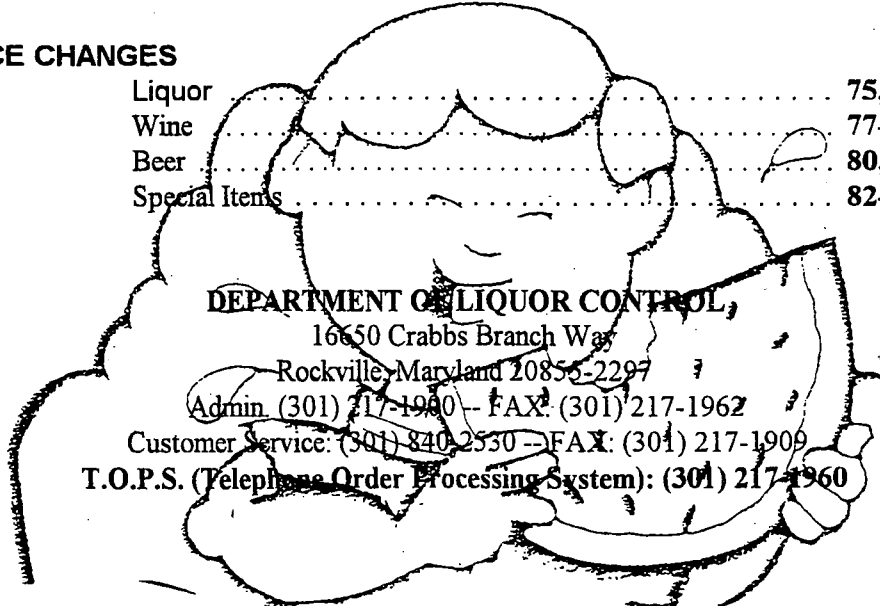
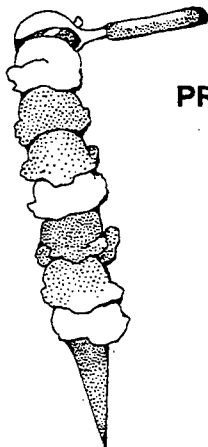
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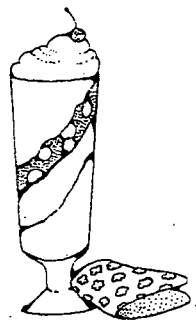
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DEPARTMENT OF LIQUOR CONTROL,
16650 Crabbs Branch Way
Rockville, Maryland 20855-2297
Admin (301) 217-1900 - FAX: (301) 217-1962
Customer Service: (301) 840-2530 - FAX: (301) 217-1909
T.O.P.S. (Telephone Order Processing System): (301) 217-1960



FROM THE BOARD OF LICENSE COMMISSIONERS

LISTING OF NEW LICENSEES

Hoffberg's of Bethesda 4917 Elm Street Bethesda, MD 20814	B BWL (H-R)
Jomel Restaurant & Karaoke 11125 Georgia Avenue Wheaton, MD 20902	H BW
La Terrazza 21030-J Frederick Road Germantown, MD 20876	H BW
Ledo Pizza 1030I Westlake Drive Bethesda, MD 20817	H BW

RE-CLASS

Legend's Billiard & Café 11317 Elkins Street Wheaton, MD 20904	B BWL (H-R)
--	-------------

TRANSFER OF LICENSE

Shanghai Café (formerly Sichuan Café) 7026 Wisconsin Avenue Bethesda, MD 20814	H BW
Georgia Market (formerly Aspen Hill 6-Twelve) 13623D Georgia Avenue Silver Spring, MD 20906	A BW

FROM THE BOARD OF LICENSE COMMISSIONERS

I. Fines Levied by the Board of License Commissioners

<u>Hearing</u>	<u>Facility</u>	<u>Violation</u>	<u>Fine</u>
O/C	METRO BEER/WINE	SALE TO MINOR	\$1,000
O/C	DARNESTOWN 6-TWELVE	ALCOHOL AWARENESS	\$100
O/C	WINTERGREEN BEER/WINE	ALCOHOL AWARENESS	\$100
O/C	EL PULGARCITO	ALCOHOL AWARENESS	\$100
O/C	GOURMET BEER/WINE	SALE TO MINOR	\$1,000
O/C	PLAYERS BILLIARD CLUB	RECORD KEEPING	\$300
O/C	SUNNY GARDEN	ALCOHOL AWARENESS	\$100
O/C	ATHENIAN PLAKA	SALE TO MINOR	\$1,000
O/C	ICHIBAN	ALCOHOL AWARENESS	\$100
O/C	FLAMES	ALCOHOL AWARENESS	\$100
O/C	CAMERON SEAFOOD	ALCOHOL AWARENESS	\$500
O/C	INDIA GRILL	ALCOHOL AWARENESS	\$100
O/C	IL PINTO TRATTORIA	ALCOHOL AWARENESS	\$100
O/C	WINTERGREEN BEER/WINE	ALCOHOL AWARENESS	\$500
O/C	CHUCK E. CHEESE	ALCOHOL AWARENESS	\$500
O/C	VICINO RISTORANTE ITALIANO	ALCOHOL AWARENESS	\$500
O/C	LENOX BEER/WINE/DELI	ALCOHOL AWARENESS	\$100
O/C	BRIGGS CHANEY DELI	ALCOHOL AWARENESS	\$100
O/C	SAFEWAY	ALCOHOL AWARENESS	\$100
O/C	CHUCK E. CHEESE	ALCOHOL AWARENESS	\$100
O/C	CANTON CAFE	ALCOHOL AWARENESS	\$100
O/C	EL NORTENO RESTAURANT	ALCOHOL AWARENESS	\$100
O/C	FRED & HARRY'S	ALCOHOL AWARENESS	\$100
O/C	CARIBBEAN STYLE REST.	AFTER HOURS	\$1,000
O/C	CHEESE & WINE SHOPPE	SALE TO MINOR	\$1,000
O/C	CANCUN RESTAURANT	SALE TO MINOR	\$1,000
O/C	PARKERS AMERICAN GRILL	ALCOHOL AWARENESS	\$100
		AFTER HOURS	\$1,000
O/C	TARTUFO RISTORANTE	ALCOHOL AWARENESS	\$100
O/C	SUSHI CHALET	ALCOHOL AWARENESS	\$100
O/C	DIETLES	ALCOHOL AWARENESS	\$100
O/C	GOURMET BEER/WINE	SALE TO MINOR	\$1,000
O/C	GUDE DELI	SALE TO MINOR	\$1,000
O/C	CHICKEN BASKET	SALE TO MINOR	\$1,000
O/C	YEKTA DELI	ALCOHOL AWARENESS	\$100
O/C	WHITE OAK BOWLING LANES	ALCOHOL AWARENESS	\$100

O/C	JERRY'S - OLNEY	SALE TO MINOR	\$1,000
O/C	OUTBACK - SILVER SPRING	SALE TO MINOR	\$1,000
O/C	7-ELEVEN	SALE TO MINOR	\$1,000
O/C	LUCKY GARDEN CHINESE	ALCOHOL AWARENESS	\$100
O/C	TROPICANA RESTAURANT	ALCOHOL AWARENESS	\$100
O/C	CHUCK E. CHEESE	ALCOHOL AWARENESS	3-DAY SUSP.
O/C	CHEESECAKE FACTORY	ALCOHOL AWARENESS	\$100
O/C	RAKU - AN ASIAN DINER	ALCOHOL AWARENESS	\$100
O/C	TOKYO LIGHTHOUSE	ALCOHOL AWARENESS	\$100
O/C	PEKING CHEERS	ALCOHOL AWARENESS	\$100
O/C	CAMERON SEAFOOD II	ALCOHOL AWARENESS	\$100
O/C	7-EXPRESS	ALCOHOL AWARENESS	\$100
O/C	CORNER KICK	ALCOHOL AWARENESS	\$100
O/C	SPINNAKER'S	ALCOHOL AWARENESS	\$100
O/C	OXFORD GRILL	ALCOHOL AWARENESS	\$100
O/C	LEVANTE'S RESTAURANT	RECORDS - RATIO REP.	\$300
O/C	KELLY'S DELLY	ALCOHOL AWARENESS	\$100
O/C	BAGGIO'S	SALE TO MINOR	\$4,000
O/C	H2O	SALE TO INTOX. PATRON	
O/C	HARD TIMES CAFE	RECORDS - RATIO REP.	\$200
O/C	CAPITAL CITY BREWING	RECORDS - RATIO REP.	\$400
O/C	BUGABOO CREEK	RECORDS - RATIO REP.	\$200
O/C	ROCK BOTTOM BREWERY	RECORDS - RATIO REP.	\$700
O/C	METRO BEER/WINE	SALE TO MINOR	\$1,000
O/C	SUGARLOAF BEER/WINE	SALE TO MINOR	\$1,500
O/C	7-EXPRESS	SALE TO MINOR	\$1,000
O/C	KUM SAN OAK	SALE TO MINOR	\$1,000
O/C	MAGRUDERS	AFTER HOURS	\$500
O/C	SOLE D'ITALIA	ALCOHOL AWARENESS	\$500
O/C	WISTERIA 6-TWELVE	AFTER HOURS	\$500
O/C	GAZEBO RESTAURANT	ALCOHOL AWARENESS	\$100
O/C	CHI-CHI'S - ROCKVILLE	ALCOHOL AWARENESS	\$100
O/C	RUBY TUESDAY - ROCKVILLE	SALE TO MINOR	\$1,000
O/C	GRAND BILLIARD	SALE TO MINOR	\$1,000
O/C	NICKELBY'S	ALCOHOL AWARENESS	\$100
O/C	PIZZA HUT	ALCOHOL AWARENESS	\$100
O/C	SAM WOO	ALCOHOL AWARENESS	\$500
O/C	A & B BEER/WINE	RECORDS - RATIO REP.	\$100
2/98	LAYHILL CAFE	ALCOHOL AWARENESS	\$500
		SALE TO INTOX. PATRON	\$2,500

3/98	HOLLYWOOD EAST	SALE TO MINOR	\$500
		AFTER HOURS	\$500
		AFTER HOURS	\$500
3/98	HOUSE OF CHINESE CHICKEN	ALCOHOL AWARENESS	\$100
		ALCOHOL AWARENESS	\$500
6/98	EL TAZUMAL	DISORDERLY HOUSE	30-DAY SUSP.
6/98	YOUNG GOURMET BEER/WINE	SALE TO MINOR	10-DAY SUSP.
7/98	SANDY SPRING STORE	SALE TO MINOR	10-DAY SUSP.
7/98	BOWL AMERICA	ALCOHOL AWARENESS	\$100
7/98	CAMERON SEAFOOD	ALCOHOL AWARENESS	\$500
7/98	RAMINO'S	ALCOHOL AWARENESS	\$500
7/98	TOMATO TANGO	ALCOHOL AWARENESS	\$100
		ALCOHOL AWARENESS	\$500
7/98	INDIA GRILL	ALCOHOL AWARENESS	\$100
9/98	PORTUGUESE CLUB	AFTER HOURS	\$1,000
9/98	HILTON HOTEL	SALE TO MINOR	\$7,500
11/98	WHEATON DELI	SALE TO MINOR	\$2,000
11/98	CAMERON SEAFOOD	SALE TO MINOR	LIC. TURNED IN
11/98	FLOWER HILL	SALE TO MINOR	\$2,000
1/99	RANDOLPH BEER/WINE	SALE TO MINOR	\$1,000
1/99	PARTYTIME BEER/WINE	SALE TO MINOR	\$1,000
2/99	MR. CHICKEN	SALE TO MINOR	\$1,000
2/99	GOURMET GROG	SALE TO MINOR	\$1,000
		ALCOHOL AWARENESS	\$500

O/C - Offer and Compromise Letter

Additional Information on Compliance Check Programs in Local Area Jurisdictions

Howard Countyⁱ

In Howard County, a police officer is assigned to work directly for the County's Liquor Authority. While on assignment to the Liquor Authority, the officer is responsible for conducting compliance checks and regulatory alcohol inspections of Howard County's licensed alcohol establishments.

The Howard County police officer works undercover to conduct compliance checks using an underage buyer. The officer observes as the underage buyer attempts to purchase alcohol. After the attempted buy, the underage buyer is secured back in the officer's car. The officer then identifies himself to the clerk on duty and informs him/her of the compliance check and whether or not a sale was made. Following the compliance check, written notification of the result is sent to the licensee, clerk/server involved, Howard County Police Chief, and County Liquor Board.

In Howard County, alcohol sales to minor are generally looked at as a "business failure" and therefore only administrative penalties are assessed. It is not routine practice to follow through with criminal charges against the individual clerk/server who sells alcohol to an underage person.

The County Liquor Hearing Board hears administrative charges of selling alcohol to a minor. According to Howard County staff, 80% of sale-to-minor cases are settled through an agreement on a "statement of facts", where a fine is paid and no show cause hearing is held.

Baltimore Countyⁱⁱ

In Baltimore County, the Baltimore County Police Department's Vice Unit is responsible for conducting compliance checks. The general protocol is for checks to be conducted by two undercover police officers and one underage volunteer (UV). One undercover officer is always in the store at the time of the attempted sale to witness the interaction between the UV and the clerk/server. If the UV is asked for identification, then the protocol is for the UV to leave the store immediately. The establishment is only notified if a sale of alcohol is made to the UV.

The police report is sent to the Baltimore County Liquor Board for administrative penalties against the licensee. In general, no criminal charges are filed against the individual clerk/server. During the administrative hearing the police and UV must be present or the Liquor Board will dismiss the case.

Prince George's Countyⁱⁱⁱ

Compliance checks in Prince George's County are primarily conducted on a complaint basis only. Police officers (combination of patrol and Vice Unit officers) will conduct a compliance check of a particular establishment if requested by a liquor inspector. When checks are conducted, the protocol is for one or two officers to work with police cadets, who volunteer to work as underage buyers.

Maryland State Police^{iv}

The Maryland State Police (MSP) became active in the area of compliance checks several years ago. MSP's compliance check program was initially funded through federal money received by the Department to reduce underage drinking. Today, MSP has a formal policy for carrying out compliance checks, which includes requirements for the age and appearance of underage volunteer buyers.

The MSP compliance check program is active mainly in smaller Maryland counties where MSP performs a larger percentage of the overall policing duties. Most of MSP's compliance checks are conducted in Frederick County, Hartford County, Queen Anne's County, Wicomico County, Worcester County, Calvert County, and Charles County. The MSP do not generally conduct compliance checks in Montgomery, Prince George's, Anne Arundel, Howard, or Baltimore County.

The MSP conducts compliance checks with two officers (one undercover and one in uniform) and one underage volunteer (UV). The undercover officer is always inside the establishment to observe the attempted purchase. The UV only carries his/her real underage Maryland driver's license and money to make the purchase. If asked for identification, the UV is instructed to show his/her valid identification. Whether or not a sale is made, the UV leaves the store; after being secured in an officer's car, the officers identify themselves to the clerk and inform the establishment of the check and the results.

The MSP always file for criminal charges against the individual clerk/server who sold alcohol to the underage volunteer. A copy of the MSP event report is sent to the local county liquor board to pursue administrative licensing penalties. The MSP send a certificate of compliance to licensed establishments that pass the compliance check.

A full list of stores checked by the MSP is sent regularly to the local liquor board indicating which establishments passed and failed. Most county liquor boards where MSP operates do not require the officer or UV to be present at the time of an administrative hearing for penalties to be assessed.

Fairfax, Virginia^v

Alcohol enforcement in Virginia is a state function. The compliance check program in Virginia is carried out by the State ABC (Alcohol Beverage Control) agency. The ABC was set up three years ago to improve state efficiency in the area of alcohol enforcement. The ABC currently employs 150 full-time sworn police officers, who work in eight districts across the state. These officers inspect Virginia's 15,000 liquor establishments for compliance with all of the State's alcohol laws and regulations.

The Virginia ABC reports that in the past three years, the compliance rate from compliance checks in Fairfax County has averaged 77% (meaning that 22% of the establishments checked sold alcohol to a minor).

The selection of establishments for compliance checks each year is prepared using two automated systems, which contain information about all of the state's licensed establishments. One database generates a random list of licensees to be checked each year while a second database creates a list of those establishments to be visited because of complaints filed against them.

In Virginia, two undercover ABC officers and an underage buyer (UB) are used to conduct compliance checks. One undercover officer remains in close visual and audio contact with the UB at all times while in the store. UBs carry their valid underage Virginia ID with them during an attempted purchase and must produce it if asked. When the UB is secure, the officers inform the establishment of the compliance check and the results. Passing establishments receive written notification for their records.

In Virginia, a hearing officer (and not a citizen board) is charged with determining whether administrative penalties should be imposed on a licensee for violating an alcohol-related law or regulation. The State liquor board has established parameters for assessing fines and/or suspending or revoking an establishment's license to sell alcohol.

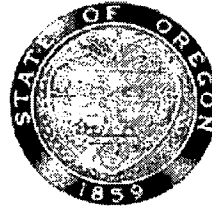
ⁱ Source of information: Officer Johnson, Howard County Police Department

ⁱⁱ Source of information: Detective Harris, Baltimore County Police Vice Unit

ⁱⁱⁱ Source of information: Major Linsey, Prince George County Police Vice Unit

^{iv} Source of information: Sgt. Woodward, Sergeant, Maryland State Police

^v Source of information, Kris Curtis, Virginia ABC



Violations and Penalties

The Commission may cancel or suspend a license or service permit for violations of any provision of ORS Chapter 471 or 472 or any administrative rule (OAR Chapter 845) the Commission adopts pursuant to these chapters.

The Commission may impose a fine instead of suspension. In most cases, the Commission allows the licensee or permittee the option of serving the suspension or paying the fine.

The Commission imposes mandatory suspensions when necessary to ensure future licensee, permittee or patron compliance.

The Commission usually computes fines by multiplying the number of days in the suspension by \$165 for manufacturer and wholesale licensees, by \$65 for retail licensees and by \$25 for service permittees.

Violation Categories:

The Commission has the following violation categories:

- I -- Violations that make licensee ineligible for a license;
- II -- Violations that create an immediate threat to public health or safety;
- III-- Violations that create a potential threat to public health or safety;
- IV --Violations that create a climate conducive to abuses associated with the sale or service of alcoholic beverages;
- V -- Violations inconsistent with the orderly regulation of the sale or service of alcoholic beverages.

The Violation and Penalty Schedule (below) lists the proposed sanctions for the first and subsequent violations within each category. The schedule also gives the categories for the most common violations.

These sanctions are guidelines. If the Commission finds aggravating or mitigating circumstances, it may assess a greater or lesser sanction.

Some of the reasons the Commission may mitigate a sanction are: previous lengthy history of compliance; good faith effort to prevent a violation; and extraordinary cooperation in the violation investigation that shows the licensee or permittee accepts responsibility.

Some of the reasons the Commission may aggravate a sanction are: prior warning about compliance problems; repeated failure to comply with laws; efforts to conceal a violation; intentional violations; the violation involved more than one patron or employee; the violation involved a juvenile; and the violation resulted in injury or death.

The Commission may always increase or decrease a sanction to prevent inequity or to take account of

particular circumstances in the case.

The Commission increases sanctions based on successive violations in the same category within a two-year period. For example, if a licensee or permittee, who has committed one Category III violation and one Category IV violation within the past two years, commits another Category III violation, the Commission assesses the sanction at the second level for the pending Class III violation.

Numerous violations within the two-year period, regardless of the type, may indicate such a disregard for the law or failure to control the premises so as to warrant cancellation of the license or permit.

Sanction Schedule

Category	1st	2nd	3rd	4th	5th	6th	7th
I	Cancel						
II	30 days	Cancel					
II(a)	10 days	30 days	Cancel				
III	10 days** or \$1,650	30 days or \$4,950	30 days	Cancel			
III(a)	7 days** or \$1,155	10 days or \$1,650	20 days or \$3,300	30 days or \$4,950	30 days and \$4,950	60 days	90 days
IV	7 days or \$1,155	10 days or \$1,650	20 days or \$3,300	30 days	Cancel		
V	3 days or \$495	7 days or \$1,155	10 days or \$1,650	20 days or \$3,300	30 days	Cancel	

* **Sanctions** These are guidelines only. The Commission can impose a different sanction where appropriate.

** Amounts are retail, wholesale, and manufacturer licensee civil penalties (\$5000 maximum per violation). Service permittees and off-premises sales employees: multiply days by \$25 (\$500 maximum per violation).

Categories for Most Common Violations

CATEGORY I -- Violations that make licensee ineligible for a license		
Statute	Admin. Rule	Violations
471.315(1)(a)(F)		Habit of abuse
471.315(1)(a)(I) 471.385(1)(b)		Convicted of a felony
471.365(2)		Allowed use of service permit by another
471.405(1)		Not operating as proposed/operating other than as the license permits
	845-06-020	Failed to notify prior to complete change of ownership Allowed interest in the business without Commission approval
	845-06-105(3)	Ceased dispenser operation 845-06-110 Operating while suspended

CATEGORY II -- Violations that create an immediate threat to public health or safety		
Statute	Admin. Rule	Violations
471.315(1)(a)(B)		Made false statement to induce or prevent Commission action
471.385(1)(a)		
471.675		Interfered with investigation
	845-06-045(1)(a)	Visibly intoxicated while on duty
	845-06-045(2)	Failed to call police at inspector's request
	845-06-045(4)	Failed to promptly admit inspector or police officer