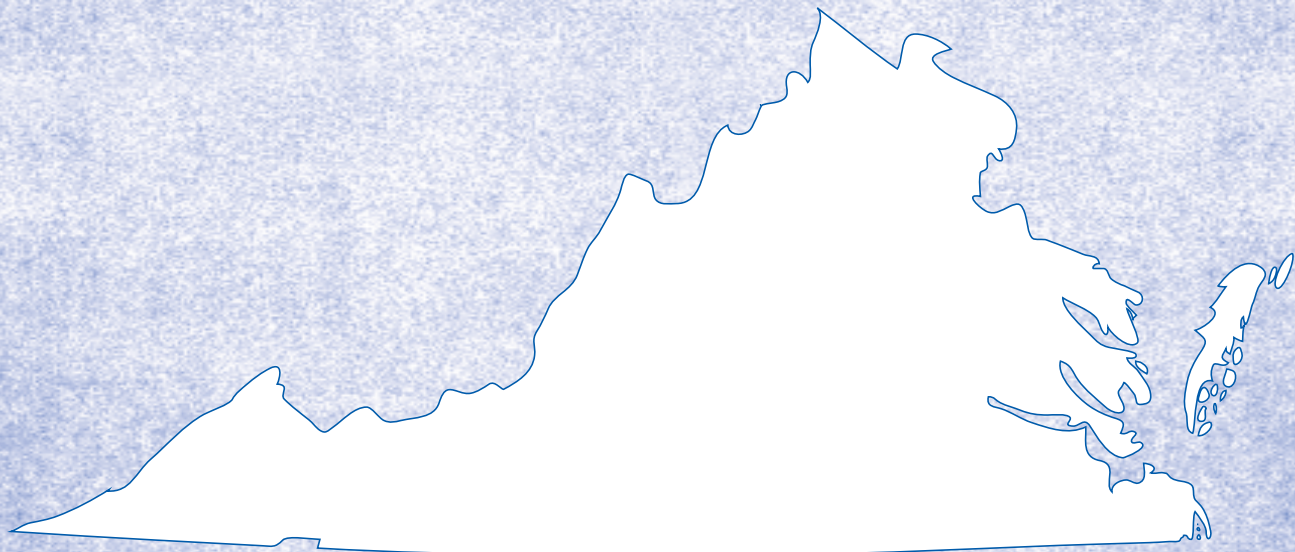


Blueprints for Change: Criminal Justice Policy Issues in Virginia

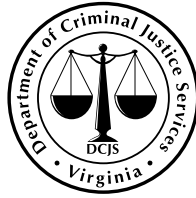


SANCTIONS AND PENALTIES FOR UNDERAGE DRINKING



Virginia Department of Criminal Justice Services
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The Department of Criminal Justice Services (DCJS) is the state criminal justice planning agency in Virginia and is responsible for administering state and federal funds dedicated to improving state and local criminal justice practices, preventing crime and delinquency, and ensuring services to crime victims.

In its role as a planning agency, the Department convened three policy sessions over a two day period in December, 2008. The facilitated sessions explored different leading edge criminal justice issues, chosen by the Department. Each three-hour session brought together a multidisciplinary group of executive-level participants who were selected because of their knowledge of the issue and their ability to advance the discussion of public policy related to the issue.

The discussions in these sessions, and the recommendations that emerged, are recorded in these policy papers.

In publishing these papers, DCJS hopes that they will stimulate further discussions by state and local decision makers and will provide useful guidance for making substantive statutory change where necessary, as well as for decisions on funding, and policy and program development.

The 2008 Blueprints for Change: Criminal Justice Policy Issues in Virginia documents are:

Sanctions and Penalties for Underage Drinking

Addressing Disproportionate Minority Contact (DMC) Across Systems

Law Enforcement Accreditation in Virginia

For additional information on these documents, please visit the

Department of Criminal Justice Services website at: www.dcjs.virginia.gov

Sanctions and Penalties for Underage Drinking



INTRODUCTION/BACKGROUND

Arrests for liquor law violations of those under age 21 have increased dramatically in recent years as the enforcement of underage alcohol laws has strengthened. According to Virginia State Police *Crime in Virginia* reports, arrests of individuals under age 21 for liquor law violations increased 35% between 2004 and 2007 and, in 2007, comprised almost 10% of all arrests of those under age 21. The primary liquor law violation for this age group is a violation of §4.1-305 of the *Code of Virginia* regarding the underage consumption, purchase, or possession of alcohol (also referred to as “underage alcohol possession”).

In Virginia, a violation of the underage possession statute is a Class 1 Misdemeanor, punishable by up to 1 year in jail and/or a fine of up to \$2,500 with a mandatory, minimum fine of \$500 or 50 hours of community services as a condition of probation supervision and, for those 18 or older, driver’s license suspension of 6 months to 1 year. For those under 18, driving privileges are denied for 6 months, unless the child is under the age of 16 and three months, in which case the child’s ability to apply for a driver’s license shall be delayed for a period of six months following the date he reaches the age of 16 and three months. Judges may also utilize a deferred judgment option.

In 2008 the Virginia General Assembly raised the penalty for anyone under the age of 21 who operates a motor vehicle after illegally consuming alcohol and has a blood alcohol concentration of 0.02 percent or more, but less than 0.08 (the legal limit for those aged 21 and over) from an unclassified offense to a Class 1 Misdemeanor (§18.2-266.1 of the *Code of Virginia*). Punishment includes a mandatory minimum fine or community service and driver’s license forfeiture for one year. This law is often referred to as “zero-tolerance” or “baby dui”.

In Virginia, we do have juveniles and young adults confined in detention facilities and jails for the underage possession of alcohol. Local probation populations have experienced increases in their caseloads, reporting over 4,000 placements of 18-20 year olds to local probation for underage possession in FY2008. The consequences of enforcement efforts and the legally prescribed penalties are being seen in the criminal justice arena without a visible impact on the root concern - that being young people drinking. There is also limited discussion regarding the collateral social and financial consequences for the Commonwealth and individuals involved.

Several policy guidance documents by prominent organizations such as the Office of the Surgeon General, the U.S. Department of Justice’s Office of Community Oriented Policing Services, and the National Research Council among others, have been published on the subject of underage drinking. They each stress that enforcement efforts should focus on the retailers and providers of the alcohol. As for the underage consumers, the “purpose of possession, consumption, purchase, and misrepresentation laws is to protect, not punish youth.”¹ *The Surgeon General’s Call to Action to Prevent and Reduce Underage Drinking* stresses that policies and laws should work to reduce the underage demand for alcohol and prevent underage access to it.²

¹ National Research Council, Committee on Developing a Strategy to Reduce and Prevent Underage Drinking; *Reducing Underage Drinking: A Collective Responsibility*; Richard J. Bonnie and Mary Ellen O’Connell, Editors; 2004; p518.

² U.S. Department of Health and Human Services; *The Surgeon General’s Call to Action to Prevent and Reduce Underage Drinking*; 2007; p70.

Policy guidance documents specify that penalties on youth must be swiftly imposed, uniformly enforced, developmentally appropriate, and avoid unintended outcomes. Suggestions and best practices across the board recommend sanctions for underage alcohol offenses such as license revocation, community service, and fines. No guidance documents recommend detention or jail as an appropriate punishment. Instead, they go so far as to recommend the use of administratively imposed sanctions over criminal sanctions, as administratively imposed sanctions can be imposed appropriately and at a lower cost to the state, without the collateral consequences which accompany criminal labeling.



QUESTIONS

What is the purpose of the prohibitions and laws against underage drinking?

What dispositional options could be used that would serve the best interest of both those who engage in underage drinking and the public's safety?

For underage possession, purchase, and consumption of alcohol, are current consequences the most appropriate? Should these be differentiated by age or by repeat offenses?

For those under age 21 operating a motor vehicle with a BAC of .02 or more, but less than .08, are current consequences most appropriate? Should these be differentiated by age or by repeat offenses?



DISCUSSION

The *Blueprints for Change* session *Sanctions and Penalties for Underage Drinking* began with a brief review of recommendations and conclusions from policy guidance documents and research on underage drinking published by nationally recognized organizations. The following is a summary of the resulting discussion.

Purpose

The primary purpose of underage drinking laws is to protect youth. In order to be effective, the consequences of violating these laws must be certain and swift. Severe criminal penalties are not likely to be given for underage possession of alcohol and therefore, they do not serve as a deterrent to the behavior.

Federal law also takes a position of protection regarding underage drinking laws. The U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) considers all underage alcohol offenses, including zero-tolerance driving offenses, status offenses. This interpretation classifies underage alcohol offenses in a manner similar to underage tobacco use, curfew violations, truancy, and running away. As such, the purpose of state laws regarding these activities should be to protect youth, not to expose them to criminal penalties that could ultimately cause harm. This purpose is so strongly held that federal law prohibits states from sentencing juveniles to detention for any status offense, which includes underage alcohol offenses.

Perception

Young people view underage drinking in a manner similar to speeding - everyone does it. The perception is that only a handful will get caught and society often looks the other way. The frustration is that most people do not see themselves as the one who will get caught, much less punished. The view of underage drinking in a manner similar to speeding extends to the perception of how such activities are viewed by the law. Young people believe they are receiving a citation, similar to a speeding ticket. It is not until they are in court that many realize they actually have an arrest for a criminal charge.

The selective application of alcohol prohibition to a segment of the population is a contributing factor to the perception issue. It is hard to convince someone that on one day drinking is detrimental, but the next day (i.e. your 21st birthday) it is fine. This is especially true for use of a legal substance such as alcohol. Illegal substances, such as cocaine, are harmful and illegal across the board, regardless of age and therefore, the perception is different.

Another contributing factor to the perception of underage drinking laws held by youth may be the mixed message sent by Virginia's laws regarding marijuana. Under Virginia law, a first offense of marijuana possession carries a lower penalty than underage alcohol possession. Section 18.2-250.1 of the *Code of Virginia* specifies the punishment for a first offense of marijuana possession as up to 30 days in jail and/or a fine of not more than \$500. Only subsequent offenses of marijuana possession are classified as Class 1 misdemeanors.

The issue of perception also extends to policymakers. "The most active area of legislation addressing youth access [to alcohol] is to impose a wider range of more stringent penalties on young people. This trend is unfortunate because stiffer penalties will have little or no effect. Imposing stiffer penalties provides the appearance of addressing the problem without political fallout but is likely to have no actual preventative impact."³ When discussing Virginia laws, policymakers do not believe that judges will sentence a young person to jail or detention for underage possession. When a jail or detention sentence is imposed, policymakers point to leadership issues at the local court level. This view by the very policymakers who are responsible for making and enforcing the laws further devalues the effectiveness of them.

Unintended Consequences and Costs

A criminal background can have long-term consequences for an individual and serve as a barrier to many things. As a Class 1 Misdemeanor, underage alcohol possession is a criminal offense and has created barriers for young Virginians seeking employment, higher education, and military service. Criminal offenses, even when dismissed under deferred judgment and first offender provisions, follow individuals. The collateral consequences of an arrest or conviction are also generally not understood by a young person until they go to apply for a job or school.

In regard to punishment, experts agree that placing a young person in detention or jail for a minor offense can be psychologically harmful. The research also proves that putting low risk individuals in inappropriate supervision or treatment situations actually increases their risk of recidivism. The long-term, unintended consequences of inappropriate sanctions extend to both the individual and society.

Criminal processing is lengthy and expensive. In 2007, the amount of time from arrest to disposition for misdemeanor offenses averaged 92 days.⁴ As for costs, there are several costs in addition to the basic court time. Since underage alcohol offenses are criminal, individuals charged with violations are allowed legal counsel that, if the individual cannot afford, is provided at the expense of taxpayers. Arresting officers also have to take their time to be in court. Added to the cost is any pretrial time spent in detention or jail, transportation costs, and pre-trial supervision.

The cost may continue post-trial depending on the court's action. Under current law, a violator of underage drinking statutes may be given detention or jail time. They may also be placed under supervised probation. Supervision generally includes face-to-face intakes, office visits, drug/alcohol screening, and other possible conditions including education and treatment. Probation officers are tasked to spend time on these cases, thereby reducing the amount of time they have for more serious offenders - including those with long criminal histories. Depending on the officer and the court, a minor technical violation of supervision can result in a return to court and possible detention or jail for that violation.

³ Pacific Institute, *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*, October 2006, p30.

⁴ Supreme Court of Virginia; figure is for cases in General District Court only; average days for case conclusion are not reported for Juvenile and Domestic Relations Court.

Federal Funding and Law

The National Minimum Drinking Age Act of 1984 required all states to establish a minimum age of 21 to purchase and publicly possess alcohol. Under the Federal Aid Highway Act, a state not enforcing the minimum age is subject to a 10% reduction of its federal highway funding apportionment. The National Highway Systems Designation Act of 1995 ushered in the zero tolerance laws by enticing states to enact legislation requiring that any individual under age 21 with a blood alcohol concentration of 0.02 percent or greater while driving a motor vehicle be deemed to be driving while intoxicated or driving under the influence of alcohol. Failure to enact such laws results in the loss of federal aid highway construction funds. Though these Acts do require states to establish laws, they do not specify penalties that states are to impose for violations of those laws.

Another federal law, the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974 (reenacted in 2002) does specify certain parameters regarding the punishment of juveniles. Under the JJDP Act, juveniles may not be confined in detention for a status offense conviction. All underage drinking offenses are deemed status offenses by OJJDP, the federal agency responsible for administering the JJDP Act. States found out of compliance with this face the loss of federal juvenile justice and delinquency prevention funds.

Another funding stream, also administered by OJJDP, is the Enforcing the Underage Drinking Laws (EUDL) Program. This program supports and enhances efforts by states and local jurisdictions to prohibit the sale of alcoholic beverages to, and the purchase and consumption of alcohol beverages by, those under 21 years of age. Funding can go to support task forces, advertising programs, and innovative programs to prevent and combat underage drinking. This program has led to enhanced efforts to police parties, thereby greatly increasing arrests of youth.



CONCLUSIONS AND RECOMMENDATIONS

- There is a strong and understandable concern to prevent the possible deadly outcomes as seen in recent highly publicized DUI cases involving underage drinking. However, participants agree that current penalties for underage alcohol possession are too harsh and ineffective. Though time did not allow for the development of a comprehensive action plan, the discussion resulted in several recommendations:
- There is no need for a criminal record for youth possessing, consuming, or purchasing alcohol. The penalty for underage possession, consumption, and purchase of alcohol should be decriminalized.
- Current penalties for underage possession, consumption, and purchase of alcohol are neither swift nor certain; nor do they follow best practices. Therefore:

The General Assembly should change the penalties for underage possession, consumption, and purchase to administrative penalties which allow for immediate license revocation; and

Utilize police confiscation and the Department of Motor Vehicles as opposed to the courts and criminal justice supervision providers.

If a crime is committed as a result of the drinking, then that crime should be the focus of prosecution and punishment, not the underage drinking.

- There is a difference between a 13 year old drinking and a 17 year old. Police must have flexibility in how they respond to an underage drinking situation based on the age of the youth. For young individuals, police must be allowed to take the youth home to parents and handle the situation informally. A very young person drinking is indicative of other issues which may necessitate other approaches.

- When driving after consuming alcohol, an individual puts other lives at risk. The penalties for driving after consuming alcohol should be harsher than penalties for underage possession, consumption, and purchase of alcohol.
- Assessment and treatment options, if necessary, can be handled without using a criminal justice option such as probation.
- The short and long-term consequences of violating underage drinking laws need to be communicated to both youth and parents.
- Greater efforts for comprehensive, community approaches need to be made in education and law enforcement.



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Policy Guidance and Research References:

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