

California Litigation Advisory: Underage Drinking: Protecting Your Child

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Summertime naturally brings teens and college-age kids together to socialize, and the inevitable happens: house parties and alcohol. The reality in our society is that young people—over 21 and underage—will be faced with alcohol at parties this summer. Every parent has encountered some form of this problem or worry. However, there are legal consequences that we must be aware of in order to fully protect our children and prevent a minor in possession complaint from turning into something more serious with lasting consequences. Many of these consequences may not be immediately apparent, but are particularly serious.

DUI Penalty Enhancements for Underage Drunk Driving

For young people charged with driving under the influence (DUI) in California, the license loss provisions of the law are very serious. The penalty for a first offense can be license suspension for *six months* and mandatory completion of a driving-under-the-influence program¹ if no injury resulted—and a fine of at least \$390 and 96 hours of jail time.² For those under 21, driving with a blood alcohol level of 0.01 or above is against the law³—and if the underage driver has blood-alcohol content of 0.05 or above, he or she can *also* be charged with a second, independent offense.⁴ Additionally, if an underage driver refuses to submit to a preliminary alcohol screening test upon being stopped, that will result in a one-year license loss.⁵ Police will be required to take the driver's license and provide the driver with written notice of intent to suspend, which will take effect in 30 days.

As an aside, license loss will also occur if an underage person is found to have purchased or be in possession of alcohol. Purchase or possession of alcohol by a person under 21 can result in a *one-year* loss of license.⁶ Carrying alcohol—even in a closed container—in an automobile with an underage passenger or driver is punishable by up to a \$1,000 fine or six months in jail.⁷

Right to Decline Breathalyzer

The breathalyzer is always the subject of questions to counsel: “If stopped for DUI should I take the breathalyzer?” The effect of such refusal is that it deprives the government of objective scientific evidence of your blood alcohol level at the time you were stopped. On the other hand, refusing to take a blood or chemical test will result in a fine with a one-year license suspension—and mandatory jail time if other evidence leads to a DUI conviction.⁸

Drivers, both under and over 21, must understand the license loss consequences of a refusal and that such a refusal can be used against you at trial as evidence in California.⁹ Drivers do,

however, have the right to (respectfully) decline to perform preliminary alcohol screenings—that is, portable breathalyzer testing in the field—when requested to do so by police.¹⁰

Police Roadblocks

State officials have declared that 2010 will be “the year of the checkpoint,” and with good reason: sobriety checkpoints have become increasingly profitable for local police departments in cash-strapped California, with UC Berkeley’s Center for Investigative Reporting finding that checkpoints in 2009 generated nearly \$40 million in towing fees and fines.¹¹

Police roadblocks are legal in California, but they are subject to certain requirements:

- Decision-making must be at a supervisory level, rather than by officers in the field.
- A neutral formula must be used to select vehicles to be stopped, such as every vehicle or every third vehicle, rather than leaving it up to the officer in the field.
- Primary consideration must be given to public and officer safety.
- The site should be selected by policy-making officials, based upon areas having a high incidence of drunk driving.
- Limitations on when the checkpoint is to be conducted and for how long, bearing in mind both effectiveness and intrusiveness.
- Warning lights and signs should be clearly visible.
- Length of detention of motorists should be minimized.
- Advance publicity is necessary to reduce the intrusiveness of the checkpoint and increase its deterrent effect.¹²

Remember, once police have legally stopped you and approached you at the driver’s side window, it doesn’t take much to get from there to the point where they are asking you to get out of the car for a field sobriety test. Usually this is triggered by what police observe in regards to the driver (red and glassy eyes, slurred speech, difficulty producing license and registration, an odor of an alcoholic beverage on your breath, and any other symptoms consistent with impairment). Young people in particular, when stopped at a roadblock during prime drunk driving hours (holiday evenings, late night, etc.) should expect a heightened level of scrutiny by police, especially if the car is full of passengers and it looks like a party.

Fake IDs Are a Crime

Using any fake evidence of age and identity—such as a California driver’s license—is a misdemeanor punishable by a fine of at least \$250 or mandatory community service¹³ and a yearlong suspension of their actual license, or a yearlong delay in obtaining one.¹⁴ Distributing a fake ID is also a California misdemeanor.¹⁵

If a party-goer dies or suffers serious injury resulting from consuming alcohol that was purchased by your underage child using a fake ID, your child will be facing a totally different investigation and set of charges. Expect the courts to react differently, too. Most liquor stores have video surveillance cameras and in cases where death or injury result from alcohol

purchased by a minor, police can determine where the liquor for the party was purchased and seize the video as evidence. Case closed.

Manufacturing fake IDs is the one of the latest and most popular fads, especially on college and university campuses. A few years ago, a five-agency operation broke apart massive a fake ID operation responsible for hundreds of forgeries—run by a 21-year-old UCSD student. When a DMV investigator suspected a fake, a monthlong undercover action was launched, culminating in a search warrant that revealed a computer, printer, scanner, and a hologram embosser.¹⁶ Legal action was swift, and those who purchased the IDs surely faced consequences of their own. Making or using a fake ID can result in your child's arrest without a warrant (immediate arrest).

Understand the Political Nature of Alcohol-Related Crimes

Underage drinking and DUI are “political” crimes in that they come with terrific pressure on police and prosecutors to be tough on these offenses. The government is pressured not just by these factors, but also by MADD, SADD, and other advocacy groups. They don't want to risk giving your child a break and then having him go off and kill someone a mile down the road. In that example, it would not take long for the recrimination to fly and the steps to be traced back to the initial decision to give your child a break. No matter how good a kid your child is, and no matter how well the local police may know you and your family, the days of driving him or her home are over. Police face too much political exposure and risk in these situations, especially after a stop has been made and recorded with dispatch.

Parent-Sponsored Parties where Liquor is Served

Beware, the civil liability is enormous. Wittingly or unwittingly, if you host a party for your child (thinking that it is safer to have everyone under your roof where you can control their activities), beware the danger. The latest trend among teens is to put vodka in a water bottle, which to the lay person looks like the teenager is simply drinking water. Review your insurance coverage first and have good intelligence. Also be careful and know who is on the guest list—because even good insurance coverage can't prevent tragedies in the first place.

In December 2008, a 16-year-old Redding girl named Shelby Lyn Allen died of alcohol poisoning after several hours of heavy drinking in a friend's house. After 16 or 17 shots of pure vodka, Allen sent a string of text messages to friends bragging about how much she was drinking. The coroner's office reported that the 107-pound girl had a blood alcohol level of 0.33 percent. Allen was found tragically dead the next morning—and her friend was charged with manslaughter,¹⁷ although charges were eventually dismissed.¹⁸ Where were the parents? Upstairs, fast asleep the whole night while a girl died in their bathroom.

Dangers of House Parties in Your Home While You Are Away

No matter how good your kids are, they will be tempted to have a few friends over if you are away for a period of time...and this can quickly turn into a larger group. If this happens, you risk social host liability if someone is injured or killed as a result of what happens on your premises. Apart from criminal investigation, it is wise to review your homeowner's insurance policy and any umbrella policies to assess your coverage. It is also wise to explain to your child the consequences and how quickly you can get from a simple house party to a lawsuit.

Endnotes

¹ CAL. VEH. CODE § 13352(a)(1)

² CAL. VEH. CODE § 23536

³ CAL. VEH. CODE § 23136

⁴ CAL. VEH. CODE § 23140

⁵ CAL. VEH. CODE § 13353.1

⁶ UCLA Student Legal Services, Things to Think About If You Drink Alcohol, http://www.ucpd.ucla.edu/2008/legal_consequences_alcohol.pdf (last visited July 20, 2010).

⁷ CAL. VEH. CODE § 23224

⁸ CAL. VEH. CODE § 23612(a)(1)(D)

⁹ CAL. VEH. CODE § 23612(a)(4)

¹⁰ CAL. VEH. CODE § 23612(i)

¹¹ Ryan Gabrielson, *Car Seizures at DUI Checkpoints Prove Profitable for Cities, Raise Legal Questions*, CALIFORNIA WATCH: A PROJECT OF THE CENTER FOR INVESTIGATIVE REPORTING, Feb. 13, 2010, <http://californiawatch.org/public-safety/car-seizures-dui-checkpoints-prove-profitable-cities-raise-legal-questions>.

¹² *Ingersoll v. Palmer*, 43 Cal.3d 1321, 1341-48 (1987).

¹³ CAL. BUS. & PROF. CODE § 25661

¹⁴ CAL. VEH. CODE § 13202.5

¹⁵ CAL. BUS. & PROF. CODE § 25660.5

¹⁶ California Alcohol Beverage Control, UCSD Student in Custody for Fake I.D. Factory, <http://www.abc.ca.gov/press/PR02-11.pdf>.

¹⁷ Jim Schultz, Teen Charged with Manslaughter in Shelby Lyn Allen's Death, REDDING RECORD-SEARCHLIGHT, May 27, 2009, <http://www.redding.com/news/2009/may/27/teen-charged-manslaughter-shelby-lyn-allens-death>.

¹⁸ Jim Schultz, *Charges Dismissed in Shelby Lyn Allen Alcohol-Poisoning Death*, REDDING RECORD-SEARCHLIGHT, Nov. 20, 2009, <http://www.redding.com/news/2009/nov/20/charges-dismissed-in-shelby-lyn-allen-alcohol>.

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