

## Litigation Advisory

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### Underage Drinking: Protecting Your Child

BY ROBERT DELAHUNT, JR.

Summertime naturally brings teens and college-age kids together to socialize, and the inevitable happens: house parties and alcohol. 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.

#### OUI Penalty Enhancements for Underage Drunk Driving

For young people charged with operating under the influence (OUI), the license loss provisions of the law are very serious. For a driver under 21 years of age, the license loss for a first offense is *210 days* if the driver is a first time offender *and* elects to accept the alcohol treatment/rehabilitation program normally given to first-time drunk drivers. Additionally, if the underage driver *refuses to take the breathalyzer* upon his/her arrest and booking, that will result in an *additional 180-day* license loss.

Furthermore, if the driver is under 21 years of age and the breathalyzer reading is .02 or above, police are required to take the driver's license, provide the driver with written notice of intent to suspend, and issue a temporary driver's license good for 15 days. If the driver is under 21 years of age this results in a *90-day* suspension. If the driver is under 18 years of age, this results in a *180-day* suspension.

The breathalyzer is always the subject of questions to counsel: "If stopped for OUI 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. There are some instances where, on an admission of sufficient facts (different from a guilty plea), a judge can be persuaded to order that the license loss for the breathalyzer refusal run concurrently with the license loss for the admission and

*For assistance in this area please contact the authoring attorney listed below or any member of your Mintz Levin client service team.*

Robert Delahunt, Jr.  
(617) 348-4480  
RMDelahunt@mintz.com

disposition of the whole case. However, the Registry of Motor Vehicles is unlikely to acknowledge this and you will face the likelihood of consecutive license losses.

## Right to Decline Breathalyzer

Drivers, both under and over 21, must understand the license loss consequences of a refusal and that such a refusal cannot be used against you at trial in evidence in Massachusetts. Drivers also have the constitutional right to (respectfully) decline to perform field sobriety tests when requested to do so by police. As with the breathalyzer refusal, this refusal to perform field sobriety tests cannot be used in evidence against the driver at trial to infer his or her guilt.

As an aside, license loss will also occur if an underage person is found to have purchased or be in possession of alcohol. Purchasing alcohol—or possession of alcohol—by a person under 21 can result in a 90-day loss of license.

## Police Roadblocks

Police roadblocks are legal in Massachusetts as long as police have:

- publicized them in advance with local media to reduce fear, surprise and inconvenience;
- have on-site control by supervisory personnel;
- limit the roadblock sites to areas with a recent history of drunk driving accidents or arrests;
- involve measures to promote safety;
- have criteria for conducting sobriety checks of certain drivers; and
- maintain records involving roadblocks.

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 (eyes red and glassy, speech slurred, 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 Felony

Making, stealing, forging or counterfeiting (or assisting another in doing so) a Massachusetts learner's permit or driver's license (or using another person's learner's permit or driver's license to obtain a license) is a felony punishable by up to five years in the state prison and a \$500.00 fine.

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. Recently, at a prominent local college, a student had a thriving business manufacturing false IDs complete with photo images of the student. This business was being operated out of her dormitory room on campus. When campus and local police were tipped off, they arrived on-site with a search warrant and found the computer files and camera. Legal action was swift and academic discipline won't be far behind. And those who purchased the IDs can expect a visit from the Dean very shortly. 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 OUI 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. A recent bout of alcohol poisoning at a Weymouth house party under these circumstances highlights the dangers of kids coming to a party in your home that you chaperone. Review your insurance coverage first and have good intelligence. Also be careful and know who is on the guest list.

### 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.

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*Robert Delahunt, Jr. is a member in the Litigation Section at Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. in Boston. He is a former state prosecutor in Norfolk and Middlesex counties, former Special Assistant District Attorney in Suffolk County under Ralph Martin, and former Special Assistant Attorney General under Attorneys General Harshbarger and Reilly.*

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