
MEMORANDUM

TO: HOUSE COMMITTEE ON HEALTH CARE, VERMONT GENERAL ASSEMBLY
FROM: THE PRE-LAW CLASS, SOUTHWEST VERMONT CAREER DEVELOPMENT CENTER
SUBJECT: REPORT ON ACCESS TO TOBACCO AND ALCOHOL BY THE UNDERAGE IN VERMONT
DATE: APRIL 3, 2015

Submitted by: Cyonn Alexander, McKayla Brown, Laina Main, Chelsea Corrow, Samuel Gezelius, Mariah Spencer, Thomas Tift, Celia Brambley, students. Mr. Bruce Lee-Clark, Pre-Law Instructor.

We have been asked to research a list of policy or statutory actions we think may help identify and limit underage access to tobacco and alcohol in the State of Vermont. Below is a list of the options which we have identified, researched, and discussed. Also included are recommendations we believe may reduce underage use of tobacco and/or alcohol.

During this project we conducted legal and policy research using the tools available to us in the classroom. Additionally, we undertook interviews with a number of important officials involved in the regulation of access to tobacco and alcohol. We also interviewed local retailers as well as local teens, both smokers and non-smokers, users of alcohol and non-users, to discover the current views of resources and practices locally here in southwest Vermont. We have utilized the most recent results of the Vermont Youth Risk Behavior Survey from 2013.¹ While we were conducting this work, we also participated in the Survey for 2015.

We have arrived at some observations about these proposals which are found below.

Access to Tobacco

¹ Vermont Department of Health, produced in partnership with the Department of Education, now the Agency of Education..

1. Raising the legal age to possess and purchase Tobacco to 21.² This will not work to limit access because people get addicted at a younger age, so they are still going to get tobacco products from people who are older than they are. They get their tobacco products from parents and older friends who, most often, purchase the tobacco for them.
2. Changing the penalties for the people who give underage people tobacco such as taking away fishing, hunting, or driver's licenses. The current penalty is a civil penalty of not more than \$100.00 for the first offense and not more than \$500.00 for any subsequent offense. [7 V.S.A.§1007] Problem: Does not possessing a driver's license stop people from driving? Does not possessing a license stop people from hunting? Increasing penalties to include the denial of licenses creates an additional enforcement issue for law enforcement and does not seem to stop the behavior in question.
3. Limiting the size/number of advertisements for tobacco products on the outside of stores is another option. This may involve a sign ordinance, and involves the First Amendment right to free speech. In general, sign ordinances are lawful so long as they do not try to eliminate all speech, and can be targeted to time, place and manner restrictions of speech. The State could demonstrate a compelling state interest that could be narrowly tailored to meet that state interest of reducing the numbers of underage smokers.
4. Limiting the size/number and location of advertising of tobacco products inside stores so as not to influence use by those under age. This would also be a limit on First Amendment commercial speech and requires a compelling state interest and a resolution that is narrowly tailored to meet that interest. It is not clear to us that this legal argument could be successful. There is certainly a compelling state interest in the health of minors, but the elimination of all "in store" speech is not narrowly tailored. However, the limiting of location of advertising displays to be above a particular height could be supported as being narrowly tailored.
5. One person has suggested limiting the sale of tobacco (and alcohol) products to just a few stores around town. This would allow police to have better control over the sale of tobacco (and alcohol) in those locations because of easier observation. The decision as to which current vendors could continue to sell tobacco and alcohol products would be politically difficult. State legislation would most likely

² U.S. Department of Health and Human Services. Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012. - See more at: <http://www.tobaccofreeflorida.com/current-issues/tobacco-free-schools-the-issue/#sthash.2OhxCoTz.dpuf>

be required in order to limit the sale of tobacco and alcohol to a few locations; most likely a state contracted vendor.

6. We believe that stores, mostly small neighborhood stores, could be prohibited from selling tobacco products if they are within a certain distance from schools. This could be accomplished through a zoning ordinance. Such a zoning ordinance would not, we believe, violate the First Amendment or any provision of the Vermont Constitution.
7. Education and Cessation Programs for underage smokers:
 - a. Cessation: We have found few or no options for cessation from smoking for those who are under the age of eighteen (18) and who wish to quit. They have to try to quit smoking on their own. We find few reasons to expect that these efforts will be successful. While there was a state-wide program a few years ago, that program did not exist in Bennington and its surrounding towns. We believe that there should be more active tobacco cessation programs aimed at teens, perhaps located in the Middle and High School, and at local community hospitals and health centers. Cessation products should be made available through these programs for those who are trying to break this addiction. One possible place for the distribution of these products could be school nurse offices.
 - b. Education: While there is health education available at both the Middle and High School, the experience of most of us is that prevention of tobacco use is not given much time, though many students who begin smoking, begin smoking or using tobacco products during their middle school and early high school years. The State of Florida has seen dramatic drops in underage smokers as the result of an educational emphasis.³ This educational effort stresses not only the unhealthy aspects of smoking, but also explores the marketing efforts of tobacco product companies and why teen smoking is necessary for their continued success in the United States.

Alcohol

1. Limiting the advertising of Alcohol products outside of stores. See the argument at number 3, above.
2. Limiting the advertising of Alcohol products inside stores. See the argument at number 4, above.

³ <http://www.floridahealth.gov/programs-and-services/prevention/tobacco-free-florida/index.html>.

3. Limiting the sale of Alcohol products to just a few stores around town. See the argument at number 5, above.
4. Stores can sell Alcohol products within a certain distance from school. See the argument at number 6, above.
5. “Shoulder Tap Stings” utilizing a minor to solicit an alcohol purchase by an individual who is otherwise entering a store for any possible reason. While we do not believe that this amounts to entrapment, this system “feels” like there is more engagement with the public in an effort to test the general public about their willingness to supply alcohol to underage purchasers. While the current “sting” procedure involves those who voluntarily choose to be agents who sell alcohol (and tobacco), they are trained by their employers and are expected to follow their employer’s and the state’s directives. Engaging the public in a “Shoulder Tap Sting” seems qualitatively different, though it does not, in our view, arise to the level of entrapment.
6. Change the penalties for giving alcohol to underage people, like taking away licenses for driving, hunting and the like. See the arguments at number 2, above.
7. We have examined the possibility of expanding a “Social Host” statute regarding the mental state requirements for the possession of alcohol by minors at a party and holding the owner of the property criminally liable. The required mental state could be expanded in several ways; for example, if they “knew or should have known” that minors were in possession of alcohol on their private property, or merely including reckless and criminally negligent mental states similar to the statute passed in Connecticut. (See: NH RSA §655:18 and CGS §30-89a (2006) below.)

New Hampshire:

“644:18 Facilitating a Drug or Underage Alcohol House Party. –

I. A person shall be guilty of a misdemeanor if such person owns or has control of the occupied structure, dwelling, or curtilage, where a drug or underage alcohol house party is held and such person *knowingly commits an overt act in furtherance of the occurrence* of the drug or underage alcohol house party knowing persons under the age of 21 possess or intend to consume alcoholic beverages or use controlled drugs at such drug or underage alcohol house party. (Emphasis added)

II. It is an affirmative defense to prosecution under this section if a person gives timely notice to a law enforcement official of the occurrence of the drug or underage alcohol house party or engages in other conduct designed to prevent the occurrence of such party,

or takes action to terminate such party once underway.

III. In this section, "drug or underage alcohol house party" means a gathering of 5 or more people under the age of 21 at any occupied structure, dwelling, or curtilage, who are unrelated to the person who owns such occupied structure, dwelling, or curtilage or has control thereof, where at least one person under the age of 21 unlawfully possesses or consumes an alcoholic beverage or controlled drug. "Occupied structure" has the same meaning as in RSA 635: 1, and "dwelling" and "curtilage" have the same meaning as in RSA 627:9.

IV. The provisions of this section shall not apply to the use of alcoholic beverages at legally protected religious observances or activities, or to those persons using a controlled drug under a physician's care where the use of the drug is consistent with the directions of a physician.

Source. 2004, 25:1, eff. April 14, 2004.”

Connecticut:

Sec. 30-89a. Permitting minor to illegally possess liquor in dwelling unit or on private property or failing to halt such illegal possession. Penalty. (a) No person having possession of, or exercising dominion and control over, any dwelling unit or private property shall (1) *knowingly, recklessly, or with criminal negligence*, permit any minor to possess alcoholic liquor in violation of subsection (b) of section 30-89 in such dwelling unit or on such private property, or (2) fail to make reasonable efforts to halt such possession. For the purposes of this subsection, “minor” means a person under twenty-one years of age. (*Emphasis added*)

(b) Any person who violates the provisions of subsection (a) of this section shall be guilty of a class A misdemeanor.

(Effective 2006)

(P.A. 06-112, S. 1; P.A. 12-199, S. 1.)

History: P.A. 12-199 amended Subsec. (a) by adding “recklessly, or with criminal negligence” in Subdiv. (1) and deleting provision re knowing that minor possesses alcoholic liquor in violation of Sec. 30-89(b) in Subdiv. (2) and amended Subsec. (b) by replacing penalty of an infraction for first offense and a fine of not more than \$500 or imprisonment of not more than 1 year or both for subsequent offense with a class A misdemeanor.