

## **ALCOHOL, TOBACCO AND OTHER DRUG LAWS THAT SEEK TO PROTECT CHILDREN AND YOUNG ADULTS (PART I)**

-by Lisa B. Hanson, Roseau County Attorney

Going all the way back to the 1700s, when this nation was in its formative years, discussion and debate have been vital in increasing public awareness and bringing about changes in the law. In recent weeks, there has been much discussion and debate in our county about laws pertaining to alcohol and underage persons. This article is intended to provide factual information about current laws, and stimulate discussion about whether those laws are necessary or adequate.

Many laws have been enacted in an effort to protect children and young adults from harm. Several of those laws deal with keeping alcohol, tobacco and other drugs out of their hands. People who break these laws face both criminal and civil liability. The first part of this article will address criminal laws, while the second part will address civil laws.

Criminal law involves a charge for an act that has been classified as a crime by the legislature or local governing body. Criminal charges are always initiated by the local, state or federal government through a prosecutor. Criminal laws are classified by the maximum punishment allowed: in Minnesota felonies are punishable by more than one year in prison; gross misdemeanors are punishable by up to one year in the local jail and a \$3,000 fine; and misdemeanors are punishable by up to 90 days in the local jail and a \$1,000 fine.

### **CRIMINAL LAWS**

**Furnishing Alcohol to a Person Under 21** (Gross Misdemeanor or Felony): M.S. § 340A.503 Subd. 2(1) makes it illegal for anyone to “sell, barter, furnish, or give alcoholic beverages to a person under 21 years of age.” In order to be found guilty of this offense, the prosecutor must show that you were responsible for putting alcohol in the hands of a person under 21. The prosecutor is not required to show that you intended to give alcohol to an underage person or that you knew the person to whom you gave alcohol was underage. This law puts an affirmative duty on those who sell or provide alcohol to others to make sure that they are of age. This offense is a gross misdemeanor, but becomes a felony if the underage person becomes intoxicated and causes or suffers death or great bodily harm as a result of the intoxication (M.S. § 340A.701 Subd. 1(4)).

There are two defenses to this crime: 1.) a parent may give their underage child alcohol for consumption in their own home (M.S. § 340A.503 Subd. 1(a)(2)); and 2.) good faith reliance upon valid photo identification presented by the underage person (M.S. 3 340A.503 Subd. 6(b)). Clerks and bartenders may seize fake or altered identification (M.S. 3 340A.503 Subd. 6(c)). Mistake is not a defense.

Examples: older friend purchases alcohol for underage friend; parents provide child and his friends with alcohol for party in their home; bartender sells alcohol to underage person; underage person shares stolen alcohol with underage friends.

**Permitting Consumption (Misdemeanor):** M.S. § 340A.503 Subd. 1(a)(1) makes it illegal for a liquor licensee to permit anyone under the age of 21 to drink alcoholic beverages on licensed premises.

Example: employee observes underage person drinking an alcoholic beverage that was purchased for them by another patron.

**Lending Identification to Person Under 21** (Gross Misdemeanor): M.S. § 340A.503 Subd. 2(3) makes it illegal to lend an underage person identification for the purpose of purchasing alcohol.

Example: older sibling lends underage sibling identification so they can get served in a bar.

**Contributing to the Delinquency of a Child (Gross Misdemeanor):** M.S. § 260B.425 makes it illegal to encourage, cause, or contribute (by act, word, or omission) to the delinquency of a child or to the child's status as a petty offender. This law places an affirmative duty on others to prevent children from committing delinquent acts or status offenses (things that are illegal only if you're under a certain age, like drinking alcohol and smoking).

Taking reasonable steps to control the child's conduct is a defense to this crime.

Examples: encouraging a child to steal from a store; getting a child to help set an arson fire; allowing children under the age of 18 to drink alcohol in your home. Because "child" is defined as a person under the age of 18, you cannot be charged under this law for allowing people who are 18-20 to consume alcohol in your home.

**Social Host Ordinance Violation** (Misdemeanor): Social Host Ordinances make it illegal for any person to congregate at, participate in, or knowingly permit any party or gathering of people where persons under the age of 21 are in possession of or consuming alcohol. Once an individual in lawful possession of the premises becomes aware that underage persons are consuming alcohol, he or she has a legal obligation to stop the unlawful drinking.

Social Host Ordinances are relatively new, with Kandiyohi County passing the first ordinance in Minnesota in 2007. Many cities have since enacted similar ordinances, however, a Social Host Ordinance has not yet been enacted in Roseau County or any of the cities in Roseau County. Much debate has surrounded the enactment of these ordinances. In an article titled "Social Host Liability in Minnesota," printed in Minnesota Bench & Bar, authors Jennifer Ampulski and Eric Holman state that several common concerns have been expressed in jurisdictions considering such ordinances. Concerns include: "What happens if you host a party with intent to serve alcohol only to those guests who are over 21, but underage guests are also served? Does the host have a duty to check the identification of all guests?"

Because there is currently no state law that mirrors these local ordinances, there is a loophole in the law in jurisdictions that don't have a local ordinance: it is not a crime to allow people ages 18-20 to drink in your home. You could, however, be charged with Furnishing Alcohol to Persons Under 21 if you provide the alcohol.

**Sale of Tobacco or Tobacco-Related Devices to Children** (Misdemeanor or Gross Misdemeanor): M.S. § 609.685 Subd. 1a(a) and Subd. 2(a) makes it illegal to sell tobacco or tobacco-related devices to a person under the age of 18. The first violation is a misdemeanor. Second and subsequent violations within five years are gross misdemeanors.

It is a defense to this crime if you reasonably and in good faith relied upon valid photo identification presented by the underage person (M.S. § 609.685 Subd. 1a(b)). Clerks may seize fake or altered identification (M.S. § 609.685 Subd. 6).

**Controlled Substance Crimes** (Felonies): Various provisions in Chapter 52 of the Minnesota Statutes provide increased penalties for selling controlled substances to a person under the age of 18, conspiring with or employing a person under the age of 18 to sell controlled substances, and possessing controlled substances in a school or park zone. The definition of "controlled substance" includes street drugs like methamphetamine, cocaine, and marijuana, as well as many prescription drugs like painkillers. "Sell" means to sell, give away, barter, deliver, exchange, distribute or dispose of to another person. No money needs to change hands.

Examples: parents using child to deliver marijuana; teenager sharing stolen prescription painkillers with friends.

**Child Endangerment** (Gross Misdemeanor or Felony): M.S. § 609.378 Subd. 1(b)(2) makes it illegal to permit a child to be present where any person is selling, manufacturing, or possessing controlled substances. This offense is a gross misdemeanor, but becomes a felony if substantial harm to the child results.

Example: parent has drugs in a home where children also reside.

### COMPLIANCE CHECKS

State and local law requires law enforcement to conduct regular compliance checks of all alcohol and tobacco licensees. This requirement can be found in M.S. § 461.12 Subd. 5 and Roseau County Ordinances 27 and 34.

### AVOIDING LIABILITY

**“Card Everyone” Policies:** Many licensees have found that the easiest way to avoid liability is to institute a “Card Everyone” policy. Licensees across the state now require all clerks and bartenders to card everyone purchasing alcohol or tobacco, regardless of how young or old they look. Licensees have found that this minor inconvenience can prevent major problems.

**Responsible Beverage Server Training:** This free training is sponsored locally by the Roseau County Prevention Coalition. The next trainings are set for: February 17 at 1 p.m. at Springsteel; and February 18 at 1 p.m. and 7 p.m. at the Roseau VFW.

**Train New Employees:** Immediately train new employees about laws that pertain to your business and any policies you have implemented to ensure compliance.

Those who do not work in licensed establishments can avoid liability by: not providing alcohol, tobacco or other drugs to underage persons; not allowing underage persons (other than your own children) to drink in your home; and not lending identification to underage persons.

### MORE INFORMATION

The full text of statutes cited in this article can be viewed at: [www.revisor.leg.state.mn.us/statutes/](http://www.revisor.leg.state.mn.us/statutes/). You may direct comments concerning existing or proposed state legislation to members of the house or senate, whose contact information can be found on the same site. You may direct comments concerning existing local legislation to your city council or county board.

The full text of Roseau County Ordinances cited in this article can be viewed at: <http://co.roseau.mn.us/ordinances.html>.

The full text of this article and information about keeping kids alcohol, tobacco, and drug free can be found on the Roseau County Prevention Coalition website at [www.rcpcoalition.com](http://www.rcpcoalition.com).

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