



# NLLEAGRAM

National Liquor Law Enforcement Association

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## *Message from the President*

Members and Friends of NLLEA:

It seems like only a short while ago when I attended my first NLLEA conference and looked in awe at what I would term, "the old guard", the elder statesmen of the association who set the course and directed the affairs of the NLLEA. Somehow, sometime along the way, I blinked and became one of them!

This past year has likewise been a whirlwind. During this time, I expect most of us have experienced shrinking resources, diminished budgets, cutbacks, reduction in staff and growing challenges. Yet through it all, the NLLEA continued to improve. This is due to the strength, commitment and dedication of its past and present members; I trust that these strengths will continue and that the NLLEA will forge new partnerships, through which we will grow in status and stature.

I have been privileged and honored to serve this past year as your president, and I thank each of you for your support, input, guidance and commitment to the NLLEA. Likewise, I encourage new members to become active in the association, to inject new ideas, suggestions and approaches to rejuvenate the association and to keep the NLLEA on course so we continue to be a national and international force in dealing with alcohol issues.

In a short while I will step down as your president and will go from being "who's who" to "who are you?" As I do, I realize that time is fleeting. But it's what we do with our time that is important. I hope that during my tenure I have made a difference. I look with pride in the fact that during

my term as president, I will award the first-ever NLLEA Honorary Membership to First Lady of Ohio Hope Taft and the first-ever John Britt Service Award. The NLLEA continues to develop a "strategic plan" to direct and guide us. And through all the turmoil of the 911 attacks and the resulting downswing of the economy, we as an association continued to advance our agenda. Many thanks again go out to the NLLEA membership, and to those associations that have partnered with us - OJJDP, NHTSA, NIAAA, MADD, PIRE and others.

Again, I strongly encourage each of you to become actively involved with the NLLEA and to continue in the tradition of the association founders and leaders. I leave my position on the NLLEA board to people I have the highest regard - David Wilson, Lynn Cayford and Aidan Moore. We are all fortunate to have such skilled, respected and ethical leaders representing us. Thank you for honoring me and allowing me to serve as your president. I will forever cherish my years with the NLLEA and the personal and professional friendships I have developed with each of you.

Roger Johnson  
2001-2002 President, NLLEA

## What's New

### NLLEA Training Academy a Success!

Forty-three students from seventeen State and local agencies attended this year's NLLEA Training Academy in El Paso, Texas. The students came from as far away as Hawaii and Ontario, Canada. New to the academy this year was the Modesto Police Department from Modesto, CA. The students came away with a new awareness of the differences between our respective agencies as well as the common challenges we all face.



Instructors and students at the 2002 NLLEA Training Academy

A new eight-hour class on electronic investigation and surveillance techniques taught by Jim Kraut of VAABC was introduced in the Academy this year. By request, the Financial Investigations class was expanded to 12 hours and included a two-hour Party Patrol class by Susan Blaker of the Washington Liquor Control Board. Kenny Gavin, DEA, and David Huff, VAABC, returned to provide an updated class on Raves and Club Drugs, a growing problem for all of us.

Many thanks to Director Greg Hamilton and Texas ABC for hosting the academy and doing an outstanding job of it! Lt. Rod Venner and Sgt. Debra Jones of the TABC El Paso office and the Agents working with them labored non-stop to make the academy a success. They worked cheerfully and tirelessly to transport students to and from the airport, area restaurants and local events. They also arranged an authentic, and excellent, Chuck Wagon Bar-B-Q at Franklin Mountain State Park. They truly went above and beyond the call of duty

from the beginning to the end of the academy. TABC has set the standard for any agency seeking to host the academy in the future. Chris Curtis and Virginia ABC take note.



The chuckwagon BBQ in El Paso, Texas

Oops! Did I give it away? That's right; Virginia ABC has offered to host the academy next year in the Chesapeake-Tidewater area. The details haven't been finalized yet and the board must confirm it at the upcoming conference, but get ready for a great academy next year. The information will be on the website and letters will go out to all member agencies immediately after the conference so you can make plans early to attend.

Tentative plans for next year's academy include an expanded class on electronic surveillance methods to include hands-on instruction for the students. We are looking into a four- to eight-hour block of instruction on tobacco enforcement since many of our member agencies are being tasked with this as well as their alcohol duties. We are also considering a new phase devoted entirely to Leadership Development. This would be targeted toward first-line supervisors but would be open to all supervisors and possibly to aspiring supervisors as well.

Last, but certainly not least, I'd like to thank all the instructors for making this year's academy a success. Without a doubt, this academy is a great



The 2002 NLLEA Training Academy Instructors

bargain. I don't know of anywhere else where you can get similar instruction from such outstanding instructors, all experts in their fields. Each one is personally committed to the success of the academy. They work long hours before they even arrive at the academy itself just preparing and updating curriculums and they work long hours once there insuring that everything runs smoothly. They are truly the strength and spirit of the academy. Thanks to each of you!

Please take a minute to let me have any thoughts, concerns or suggestions you may have. Email me or give me a call. I'll also be available at the conference and I encourage all of you to attend as well.

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## **Study Shows Louisiana's Underage Access to Alcohol Drops to 7.6%: Noncompliance Hits Record Low Level**

Alcohol and Tobacco Control Commissioner Murphy Painter says a recent study of underage access to alcohol in Louisiana shows that noncompliance with underage drinking laws has dropped to a record low of 7.6 percent. The new study, "2002 Alcohol Baseline Study - Underage Access to Alcohol in Louisiana," was funded by the United States Justice Department's Office of Juvenile Justice and Delinquency Prevention.

Painter says the low noncompliance level means that more than 90 percent of retailers in the state are actively making sure that their employees abide by the letter of the law. He points out that a survey in 1996 revealed that more than half of the businesses in the state that were licensed to sell alcohol failed to abide by the then newly legislated drinking age threshold of 21. He says some licensees were found to be selling alcohol to youths as young as 14 years old.

Painter points out that the first baseline study of underage drinking was conducted in 1998. He adds that this year's study reveals that violations of underage drinking laws since 1998 have been reduced by 79 percent for businesses whose permits allow alcoholic beverages to be consumed on premises and 65 percent for retailers whose permits do not allow consumption of alcoholic beverages on the premises.

Painter says lowering and maintaining the noncompliance level at under 10 percent has been one of the main goals of the Office of Alcohol and Tobacco Control. He credits the low noncompliance level to firm but fair enforcement policies, the passage of the 1997 Responsible Vendor Act by the Louisiana Legislature, and the overwhelming support of community groups and businesses.

Painter says the Responsible Vendor Act, Act 1054 of the 1997 Regular Session of the Legislature, has played an important role in reducing noncompliance with underage drinking laws. The law requires mandatory certification of servers and sellers of alcohol and tobacco products. To receive certification, new employees must attend an approved server-training course within 45 days of the first day of employment.

## **Washington State Liquor Control Board arrests manufacturer of fake IDs**

The Washington State Liquor Control Board, with assistance by the State Patrol, arrested a resident of Lynnwood on June 7, 2002 on suspicion of identity theft, making fake IDs, and selling the IDs to persons under 21.



The Liquor Control Board's six-month investigation revealed that this person was making fake Washington and Texas state driver's licenses and selling them in the Seattle area for a reported \$65 to \$100. The underage buyers of these licenses were using them to enter 21 and over clubs and for purchasing alcohol, which is a gross misdemeanor.



Evidence seized during the arrest that occurred on June 7, 2002

Upon arrest, the suspect possessed an Oregon and Colorado State ID that had the suspect's photo with a different name. The suspect will be booked into the King County Jail for manufacturing and supplying false identification to persons under 21—a gross misdemeanor, and for investigation of identity theft—a felony charge. Further charges may be filed based on the ongoing investigation.

## *Hot Issues*

### **State Responsible Beverage Service (RBS) Program Legislation: What are its key components? What is the role of enforcement?**

RBS programs provide training to alcohol retail establishment staff members regarding policies and procedures for reducing sales to minors and intoxicated persons. Controversial when they were

first introduced in the early 1980s, they have become a common component of both alcohol industry practice and alcohol beverage control regulation. Since Oregon first instituted mandatory RBS training for alcohol servers in 1985, 23 states have followed suit, enacting RBS statutes and regulations. RBS programs are also common in states without statutory mandates. Recent research supports the conclusion that a well-designed and implemented program will reduce illegal sales to minors and intoxicated persons.

How effective are the state regulatory structures in implementing RBS programs? A recent study<sup>1</sup> conducted by researchers at the University of Minnesota's School of Public Health addressed this question. They conducted a detailed analysis of the laws and regulations in the 23 states where legislation existed as of January 1, 2001, when the research was conducted. (Pennsylvania enacted its RBS statute in 2001, bringing the current total to 24 states.)

### **State Variation in RBS Program Design and Implementation**

They found a surprising variation in how states regulate RBS programs. For example, 12 states mandate RBS training but vary widely in who is required to receive training, a critical variable in assessing a program's effectiveness. Some states require attendance by all employees of both on-sale and off-sale establishments, but others omit certain types of establishments or employees. New Jersey and Wisconsin limit their mandate to newly licensed establishments. This means the vast majority of establishments in these two states are not required to participate in the state-mandated program because they received their licenses prior to the enactment of the legislation.

Eleven States do not mandate training but instead offer incentives to licensees who participate voluntarily. Incentives include:

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<sup>1</sup> Mosher, J., Toomey, T., Good, C., Harwood, E., & Wagenaar, A. State laws mandating or promoting training programs for alcohol servers and establishment managers: An assessment of statutory and administrative procedures. *Journal of Public Health Policy* 23: 90-113 (2002). The article is available upon request from Pacific Institute for Research and Evaluation: please email Rebecca Ramirez at [rramirez@pire.org](mailto:rramirez@pire.org) if you want a copy of the study.

- dram shop liability affirmative defense (protection from lawsuits if the licensee can establish that it adhered to RBS practices at the time of the illegal sale);
- mitigation of fines for illegal sales to minors;
- discounts for dram shop liability insurance; and
- blanket protection from dram shop suits (Texas) or suspensions or revocation of licenses for repeated sales to minors (Alabama and Florida).

The researchers also examined training program requirements, administrative requirements, and penalties. An effective RBS training program includes: (1) both manager and server training; (2) management policy development; (3) behavior change methods (such as role playing); (4) basic legal, social and physiological information; and (5) a minimum length of 4 hours of face-to-face training. Administrative requirements should include: (1) mandatory certification and recertification of trainers/training programs; (2) mandatory certification and recertification of trainees; and (3) (for mandatory states only) submission of proof of training at license renewal. Mandatory states should enact a graduated penalty structure for violating trainers, licensees, and employees, with repeat offenders subject to substantial fines or license suspension.

The researchers ranked the state legislation based on the extent to which it included these "ideal" components. Although many states received the highest ranking in one or more categories, no state had highest rankings in all categories, and many states had uniformly low ratings.

### **Enforcement of RBS Legislation**

NLLEA members will not be surprised by two of the researchers' conclusions: (1) enforcement is critical to the effectiveness of RBS programs; and (b) the state legislatures enacted these laws without providing the resources necessary to enforce them. The study examined the extent to which states provided active or passive surveillance of training programs, licensees and employees, with active surveillance involving unannounced compliance checks and passive surveillance involving responses to complaints only. Here, the researchers heard a common theme from program officials: there is

insufficient staff to establish an adequate deterrent and to ensure compliance. RBS enforcement is often folded into ongoing enforcement efforts. For example, in many states, agents will inspect a licensee's RBS training records as part of routine establishment surveillance checks. But most states do not have adequate resources to ensure sufficient spot checks, and RBS training programs may be omitted from routine inspection.

The article provides an excellent means to assess existing and proposed RBS program legislation, cautioning against weak legislation combined with benefits to the alcohol industry. Perhaps most importantly for the NLLEA, it also emphasizes the importance of liquor law enforcement and the need for increased enforcement resources when legislatures enact new programmatic requirements. This is a timely message in an era of budget cuts.

### **Getting "MADD All Over Again"**

Traffic fatality statistics for 2000 brought shocking news - alcohol-related traffic deaths increased by the largest percentage on record. This increase followed several years of stalled progress. The 1980's and early 1990's were marked by significant successes when thousands of lives were saved and countless injuries were prevented. In fact, total alcohol-related traffic deaths dropped from 57 percent in 1982 to a low of 38 percent in 1998. However, the nation is now headed in the wrong direction and for the past two years 40 percent of all traffic fatalities have been alcohol-related. This alarming development led Mothers Against Drunk Driving (MADD) and other traffic safety advocates to focus on possible reasons for these recent reversals. One of the major culprits: public and political complacency. The nation has incorrectly assumed that the drunk driving problem is solved and our nation's attention and resources shifted to other national issues, and other traffic safety concerns. This public complacency carries deadly consequences for the nation. Drunk driving is still the nation's most frequently committed violent crime. In the years 2000 and 2001, more than 16,600 people were killed in alcohol-related traffic crashes and more than 512,500 were injured. If on

one day in America more than 16,600 people were senselessly and violently killed, no doubt the media, the public and our nation's leaders would characterize it as a national crisis. However, drunk driving deaths often occur one or two at a time and do not always become a matter of public record. These deaths are no less tragic than if they had occurred all at once.

In response to concerns about these trends, MADD convened an Impaired Driving Summit in January 2002 to identify the strategies that can help change the nation's deadly course. The Impaired Driving Summit brought together more than 60 representatives of MADD leadership and key partners to discuss how the traffic safety community can work toward further progress in reducing impaired driving deaths and preventing injuries. Participants included researchers; members of the executive, legislative, and judicial branches; representatives from state and local governments; representatives from the federal government; advocacy groups; and business organizations. The input and suggestions of the group were crucial to bringing priorities into focus and identifying available resources and the challenges the nation faces. Based on the discussions, MADD selected eight high-priority recommendations that, if implemented, should result in major reductions in alcohol-related crashes. But there is one principal recommendation from which all of the others flow: the nation needs to resuscitate its efforts to stop drunk driving. *It's time to get MADD all over again.*

### **High Priority Recommendations**

- *Resuscitate the nation's efforts to prevent impaired driving*
- *Increase driving while intoxicated (DWI)/driving under the influence (DUI) enforcement, especially the use of frequent, highly publicized sobriety checkpoints*
- *Enact primary enforcement seat belt laws in all states*
- *Create tougher, more comprehensive sanctions geared toward higher risk drivers*

- *Develop a dedicated National Traffic Safety Fund*
- *Reduce underage drinking*
- *Increase beer excise taxes*
- *Reinvigorate court monitoring programs*

Note that two of the eight priority recommendations deal with alcohol beverage control issues. MADD has long recognized that controlling alcohol availability is a key to reducing impaired driving. For further information on the MADD Summit Report, go to their website at: [www.madd.org](http://www.madd.org).

## *On The Legal Side*

### **"Don't Leave Those Glasses at Home!"**

By Aidan Moore

The question for the Court of Appeals for the State of Kansas in the case of State v. Pendleton (1999) was whether the defendant's conviction for a violation of KSA 21-3610a should be sustained when the defendant was genuinely mistaken as to the age of a customer and lacked the necessary criminal intent to be convicted of selling cereal malt beverages to a minor?

#### **GENERAL FACTS OF THE CASE**

The defendant, Lyn J. Pendleton, was charged with selling alcohol to a person under the age of 21 in violation of KSA provision 21-3610a. The sale took place as the Kansas Alcohol Beverage Control sent in an underage confidential informant. Ms. Pendleton asked the underage customer to produce some identification, which he readily provided. The identification clearly showed that the underage customer had not reached the age of 21 years. Defendant, however, says that she had left her glasses at home and could not read the ID. Accordingly, she gave the ID to a bar patron, who also happened to be an experienced bartender, and asked that patron to read the ID. The patron misread

the ID and told defendant that the underage customer was 21 years of age and that it was legal to serve him. Acting upon this advice, defendant sold the underage customer a cereal malt beverage. Defendant was then charged with a violation of K.S.A. 21-3610a, which makes it illegal to buy for or sell, give, or furnish, "whether directly or indirectly, any cereal malt beverage to any person under the legal age for the consumption of cereal malt beverage." Ms. Pendleton admitted that she sold a cereal malt beverage to an underage customer. Her defense is that she was genuinely mistaken as to the age of the underage customer and had no criminal intent in selling him the cereal malt beverage.

The Court identified a number of issues within this case for resolution, including the legislative intent behind KSA 21-3610a and KSA 21-3201. Quoting for previous States opinions, the Court held that "[i]nterpretation of a statute is a question of law, and our review is unlimited. State v. Robinson, 261 Kan. 865, 874, 934 P.2d 38 (1997). A fundamental rule of statutory construction is that the intent of the legislature governs when that intent can be ascertained from the statute. When a statute is plain and unambiguous, an appellate court must give effect to the intention of the legislature rather than determine what the law should or should not be. State v. Proffitt, 261 Kan. 526, 532, 930 P.2d 1059 (1997)." State v. Lewis, 263 Kan. 843, 847, 953 P.2d 1016 (1998).

The Defendant claimed K.S.A. 21-3201<sup>2</sup> provided her with a defense to the charge. She claimed the statute seems to require that defendant must have had a criminal intent in selling the beer to the underage patron. She argues that in selling a cereal malt beverage to a minor under a genuine belief that her customer was at least 21 years of age, she did not possess the necessary criminal intent to be found guilty of violating K.S.A. 21-3610a.

The Court rejected this defense and of particular importance found the provisions of K.S.A. 21-3202(2)<sup>3</sup> to be controlling on the issue of intent.

This statute makes knowledge of the age of a minor an irrelevancy in a prosecution under K.S.A. 21-3610a. It also required the State to prove nothing more than general criminal intent. Relying on the holding in State v. Thompson, 237 Kan. 562, 567, 701 P.2d 694 (1985) on the issue of general intent the Court concluded, "...[i]ntent may be established by proof that the conduct of the accused person was willful or wanton." Therefore the Court reasoned that since knowledge of the age of a minor is irrelevant, it follows that an innocent belief that the buyer is at least 21 years of age is also irrelevant and does not relieve a defendant from criminal responsibility for the sale of a cereal malt beverage to an underage buyer.

The Court concluded its analysis of the case by holding that K.S.A. 21-3610a, when read along with K.S.A. 21-3202(2), requires only proof of a general criminal intent to establish the crime of selling cereal malt beverages to a minor. The only requirement under these circumstances is that the State must show that defendant willfully furnished a cereal malt beverage to a person under 21 years of age, which the defendant admits. The willful furnishing of the cereal malt beverage to the underage buyer satisfies the requirement of general criminal intent. It is irrelevant what defendant thought the buyer's age may or may not have been at the time of the sale.

#### SUMMARY COMMENTS

Each state has codified the principles of specific and general intent. Liquor Enforcement officers and supervisors should be comfortable with the distinction and work with prosecutors who are unfamiliar with alcohol cases to raise awareness on the issues and successes enjoyed by departments and agencies around the country.

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<sup>2</sup> "Except as otherwise provided, a criminal intent is an essential element of every crime defined by this code."

<sup>3</sup> "Proof of criminal intent does not require proof that the accused had knowledge of the age of a minor, even though age is a material element of the crime with which he is charged."