



Laws Prohibiting Alcohol Sales To Intoxicated Persons

Legal Research Report

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This report was prepared by James Mosher, Allyson Hauck, Maria Carmona, Ryan Treffers, Dave Reitz, Chris Curtis, Rebecca Ramirez, Aidan Moore, and Stacy Saetta, staff of the Pacific Institute for Research and Evaluation.

Technical Report Documentation Page

1. Report No. DOT HS 811 142	2. Government Accession No.	3. Recipient's Catalog No.	
4. Title and Subtitle Legal Research Report: Laws Prohibiting Alcohol Sales to Intoxicated Persons		5. Report Date June 2009	
		6. Performing Organization Code	
7. Author(s) James Mosher, Allyson Hauck, Maria Carmona, Ryan Treffers, Dave Reitz, Chris Curtis, Rebecca Ramirez, Aidan Moore, and Stacy Sietta		8. Performing Organization Report No.	
9. Performing Organization Name and Address Pacific Institute for Research and Evaluation 11720 Beltsville Drive, Suite 900 Calverton, MD 20705		10. Work Unit No. (TRAIS)	
		11. Contract or Grant No. DTNH 22-06-H-00062	
12. Sponsoring Agency Name and Address National Highway Traffic Safety Administration 1200 New Jersey Avenue SE. Washington, DC 20590		13. Type of Report and Period Covered Legal Research Report September 2006 – August 2007	
		14. Sponsoring Agency Code	
15. Supplementary Notes Robert L. Hohn was the Contracting Officer's Technical Representative for this project.			
16. Abstract <p>In September 2006, the National Highway Traffic Safety Administration funded the Pacific Institute for Research and Evaluation to conduct legal research on State statutes and regulations that pertain to alcohol sales and/or service to intoxicated people to reduce injuries and fatalities stemming from alcohol impaired driving. The research was to explore the variation in State sales to intoxicated people (SIP) laws and include examination of case law to assess how statutory language has been interpreted in court cases. The research was also to include a qualitative component that collected data on key issues specific to SIP law enforcement and adjudication practices. This report summarizes the findings of this research.</p> <p>Legal research findings related to six key elements: types of laws; defendants; definition of intoxication in statutory language; prohibited activities; evidentiary requirements; and penalties. The single most notable finding from the qualitative enforcement research is that SIP enforcement is relatively rare. Lack of enforcement appears to be due to three main factors: cultural norms/lack of political will to address SIP law violations; limited resources to engage in SIP enforcement operations; and statutory evidentiary provisions that make the collection of evidence overly burdensome. Other noteworthy findings concern factors that affect enforcement practice. Three case studies of State-specific enforcement and adjudication issues offer insight into SIP enforcement in Baton Rouge, Louisiana, and in California and New Mexico. The report concludes with 13 "best practice" recommendations.</p> <p><i>Laws Prohibiting Alcohol Sales to Intoxicated Persons</i> is designed for policymakers, administrators, researchers, law enforcement professionals, health and safety advocacy groups, and others who are working to reduce injuries and fatalities stemming from alcohol impaired driving. The findings and best practice recommendations provide a foundation for augmenting their efforts to prevent these tragedies on the Nation's highways with the effective application of State SIP laws.</p>			
17. Key Words Alcohol statutes, alcohol regulations, alcohol law enforcement, over-service of alcohol, DUI, DUI reduction, alcohol sales to intoxicated people, retail alcohol sales practices		18. Distribution Statement This document is available to the public online at www.nhtsa.dot.gov and from the National Information Service, Springfield, VA 22160.	
19 Security Classif. (of this report)	20. Security Classif. (of this page)	21 No. of Pages 124	22. Price --

Acknowledgements

The authors would like to thank the Special Investigations Division of the New Mexico Department of Public Safety, the Alcohol and Gaming Division of the New Mexico Department of Regulation and Licensing, the California Department of Alcoholic Beverage Control, the Detective Support and Vice Division of the Los Angeles Police Department, the Louisiana Office of Alcohol and Tobacco Control and the Office of Alcoholic Beverage Control and Gaming Enforcement within the City of Baton Rouge Louisiana's Office of the Parish Attorney. Their willingness to share information about this important area of alcohol law enforcement is truly appreciated.

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EXECUTIVE SUMMARY

In September 2006, the National Highway Traffic Safety Administration funded the Pacific Institute for Research and Evaluation to conduct legal research on State statutes and regulations that pertain to alcohol sales and/or service to intoxicated people. The research was to explore the variation in State sales to intoxicated people (SIP) laws and include examination of case law to assess how statutory language has been interpreted in court cases. The research was also to include a qualitative component that collected data on key issues specific to SIP law enforcement and adjudication practices. This report summarizes the findings of this research.

The methodology employed for this study began with legal research using Westlaw, an online tool providing quick, easy access to current and historical statutes and regulations for all 50 States, the District of Columbia, and the Federal Government, case law, and law review journal articles. The first step of the legal research involved identifying 8 to 10 State statutes and regulations and analyzing them to determine key variables. Variables were selected and defined based on both legal and social science criteria to insure accurate descriptions of the laws and to facilitate comparisons across jurisdictions. Step two of the legal research followed with statutory/regulatory research on a jurisdiction-by-jurisdiction basis using a “terms and connectors” query available in Westlaw. Once statutory/regulatory research was completed, researchers conducted a selective review of State case law using the *Liquor Liability Law* treatise and Westlaw to identify major cases for each State.

When the legal research was completed, key informant interviews were conducted with law enforcement chiefs from 10 State alcohol beverage control agencies to confirm findings vis-à-vis statutes, regulations, and case law. These 10 States included States with strong SIP statutes; States in which case law research findings required more clarification or a law enforcement interpretation; a geographically diverse sample of States; and a combination of license and control States. Based on the results of both the legal research and the key informant interviews, three jurisdictions were selected for deeper-in-depth qualitative research specific to SIP enforcement and adjudication practices. Onsite, semi-structured interviews were conducted with officials from the City of Baton Rouge Office of Alcoholic Beverage Control, the California Department of Alcoholic Beverage Control, the Los Angeles Police Department, and the New Mexico Division of Special Investigations and the New Mexico Division of Alcohol and Gaming.

Legal research findings related to six key elements:

- 1) **Types of Laws** Most States have both criminal and administrative laws prohibiting sales of alcohol to intoxicated people; only Florida and Nevada have no such laws at the State level. There are important differences between criminal and administrative SIP laws in terms of the standards of evidence required to prove guilt, who may be charged with a violation, and what types of penalties may be imposed on SIP law violators.
- 2) **Defendants** Criminal SIP statutes indicate variation among States in terms of who may be cited for alcohol service to intoxicated people. Twenty-eight States hold that “any person” may be held liable for violation of the criminal statute. Eighteen hold licensees

and/or servers liable. Three States impose more narrow restrictions on who may be held criminally liable.

The 48 States with administrative SIP statutes/regulations impose liability on licensees for violations. States with mandatory Responsible Beverage Service (RBS) programs may also impose separate administrative violations applicable to servers. Two States limit the application of their administrative laws to servers if the licensee has trained its staff (Texas) and to licensees with drive-in areas (Wyoming).

- 3) **Definition of intoxication in statutory language** State statutes use a variety of terms for denoting visible (or obvious) intoxication in their SIP laws, and most provide no definition for the term employed; however, court opinions across States are remarkably consistent in their interpretations of these laws.
- 4) **Prohibited activities** Most States use a variety of terms to denote that any furnishing of alcohol to an intoxicated person is prohibited. At least 16 State laws have an explicit provision that prohibits allowing intoxicated people to consume alcohol on licensed premises and may also prohibit remaining on the premises or loitering.
- 5) **Evidentiary requirements** Although there is a great deal of consistency across States in their interpretation State laws defining intoxication, States vary widely in what evidence is required to establish a SIP violation. Many States have multiple statutes that may have differing evidentiary standards, with criminal proceedings likely to have stricter standards than administrative hearings. In most cases State statutes and regulations provide little or no guidance, leaving it ultimately to the courts to determine the proper standards to be applied.
- 6) **Penalties** SIP laws can involve two distinct sets of penalties – criminal and administrative – each with distinct penalty provisions. In addition, many States have multiple criminal and administrative provisions, each of which may involve differing penalties. Most States do not specify what the penalties are for SIP violations in the SIP statutes and regulations. In these cases, reference must be made to general penalty provisions that apply to multiple offenses. Of the 47 jurisdictions with criminal statutes, 45 appear to permit imprisonment. Fines may be imposed either instead of or in addition to imprisonment, with maximum fines varying widely by State. Only a handful of States have established graduated penalty structures, with relatively more severe penalties imposed for repeat offenses.

Most States give wide latitude to administrative agencies in determining penalties for SIP violations, and only a small number of State statutes and regulations provide limits on the agency's discretion or mandate structured punishments. Eleven States have established tiered or graduated penalty schedules providing harsher administrative penalties for repeat offenses.

The single most notable finding from the qualitative enforcement research is that **SIP enforcement is relatively rare**. Lack of enforcement appears to be due to three main factors: (1) cul-

tural norms regarding the acceptability of alcohol sales to intoxicated people or lack of political will to address a known problem with SIP law violations; (2) Limited resources to engage in SIP enforcement operations; and (3) statutory provisions specific to elements of proof that make the collection of evidence overly burdensome. Other noteworthy findings concern factors that affect enforcement practice such as the imposition of penalties, interagency collaboration, training, and use of technology. Three case studies of State-specific enforcement and adjudication issues offer insight into SIP enforcement in Baton Rouge, Louisiana, and the States of California and New Mexico.

The report concludes with “13 Best Practice Recommendations.” Legal best practice recommendations pertain to statutory language on defendants, definition of intoxication, prohibited activities, evidentiary requirements, and penalties. Enforcement best practice recommendations pertain to interagency collaboration, data collection and analysis, forging alliances with health agencies and advocacy groups, using data to set priority enforcement areas and drive decision-making about resource allocation, providing training in SIP enforcement for law enforcement officers, and making use of available technologies to gather evidence.

Laws Prohibiting Alcohol Sales to Intoxicated Persons is designed for policymakers, administrators, researchers, law enforcement professionals, health and safety advocacy groups, and others who are working to reduce injuries and fatalities stemming from alcohol-impaired driving. The findings and best practice recommendations provide a foundation for augmenting their efforts to prevent these tragedies on the Nation’s highways with the effective application of State SIP laws.

INTRODUCTION

The cost of alcohol-related harm to society is enormous, in both human and economic terms:

- At least 85,000 people die each year from alcohol-related causes, making alcohol-related problems the third leading cause of death in the United States.¹
- Impaired driving is a significant cause of injuries and fatalities in the United States. Alcohol impaired driving was involved in 32 percent of traffic crash fatalities in 2007, resulting in 12,998 fatalities.²
- Almost one in four victims of violent crime report that the perpetrator had been drinking prior to committing the violence.³ It is estimated that 32 to 50 percent of homicides are preceded by alcohol consumption by the perpetrator.⁴
- Approximately 39 percent of accidental deaths and 29 percent of suicides in the United States are linked to the consumption of alcohol.⁵
- The total monetary cost of alcohol-attributable consequences (including health care costs, productivity losses, and alcohol-related crime costs) in 1998 was estimated to be a staggering \$185 billion.⁶

Alcohol service and sales practices can be linked to the increased risk of impaired driving and alcohol-related violence and injury. Approximately 50 percent of drinking drivers start their intoxicated journey from licensed establishments.⁷ Serving alcohol to intoxicated people can also result in other risky behavior and criminal outcomes.⁸ One out of 10 alcohol-involved violent incidents occurs in a bar or restaurant.⁹ Excessive alcohol consumption also leads to law enforcement “calls for service” for a variety of problems, including motor vehicle crashes, assaults, alcohol poisoning, vandalism, and disorderly conduct.¹⁰ These findings strongly suggest that the enforcement and prosecution of laws governing the sale or provision of alcohol at licensed establishments should have a significant impact on alcohol-related problems since intoxication can be controlled at the level of the licensed establishment.

The public health research literature has largely ignored the role of alcohol service laws in reducing problems related to intoxication. What little research is available strongly suggests that: (1) there is an association between serving practices and the over consumption of alcohol;¹¹ and (2) interventions designed to improve serving practices and the enforcement of laws governing these practices will produce a decrease in alcohol-related harm.¹²

In 2005, Pacific Institute for Research and Evaluation (PIRE) produced a report for the National Highway Traffic Safety Administration examining State laws addressing alcohol service to intoxicated people and the sale of reduced-price alcoholic beverages (i.e., “drink specials”).¹³ As part of this work, PIRE also reviewed the research literature documenting the association between over-consumption and serving practices, and the then current status of enforcement and adjudication of these laws, and identified existing promising enforcement strategies to address overservice of alcohol. Major findings of the report specific to SIP laws were as follows:

- Nearly every State and the District of Columbia prohibit sales to intoxicated people.
- There is considerable variation among State laws in terms of language employed to describe the state of intoxication as well as the provision of alcohol.
- States also vary on the level of proof required to prove guilt as well as who can be held liable for a violation of the SIP law.
- States may employ two types of penalties on licensees whose establishments are found to have sold alcohol to an intoxicated person: criminal penalties and civil penalties.
- SIP laws appear to go largely unenforced.
- Two promising enforcement strategies for addressing SIP law violations involved collecting “place of last drink” information for all DUI arrests (Washington State and Utah) and targeting undercover SIP investigations to establishments identified by local law enforcement as “problem locations.”

In September 2006, NHTSA funded PIRE to conduct additional legal research in order to build upon earlier findings. This research involved deeper-in-depth analysis of statutes and regulations that pertain to alcohol sales and/or service to intoxicated people. It also explored the variation in State SIP laws and included examination of case law to further assess how SIP statutory language has been interpreted in SIP court cases. Last, this research included a qualitative component that collected data on key enforcement issues specific to SIP enforcement. This report summarizes the findings of this research.

Laws Prohibiting Alcohol Sales to Intoxicated Persons begins with an overview of the methodologies used to conduct the legal research on State SIP statutes and the qualitative research on SIP enforcement issues. Findings are then presented in the subsequent section. Three case studies of State-specific enforcement and adjudication issues are then presented. The report concludes with recommendations specific to statutory language and enforcement practice. The Appendices contain tables providing an overview of State SIP laws, deeper-in-depth State-by-State profiles of SIP laws, and SIP case law findings, as well as the protocols used for the telephone and on-site interviews.

RESEARCH METHODOLOGY

Legal Research

To provide accurate and complete legal data, legal research staff researched all State SIP laws and regulations using Westlaw, a primary source for legal data. Westlaw is an online legal research tool that includes current and historical statutes and regulations for all 50 States, the District of Columbia, and the Federal Government, case law, and law review journal articles. The primary legal research is supplemented with reference to secondary resources including legal treatises, newsletter, reports, journals, and other documents.

In general, the legal research followed the protocols established for the Alcohol Policy Information System (APIS), a project of the National Institute on Alcohol Abuse and Alcoholism.¹⁴ The legal researchers of the project team serve as staff for the APIS project. Step one involved identifying eight to 10 State statutes and regulations and analyzing them to determine key variables. Variables were selected and defined based on both legal and social science criteria to insure accurate descriptions of the laws and to facilitate comparisons across jurisdictions. Six variables were selected.

- Who may be held liable?
- For what act?
- Definition of intoxication
- Mental state of seller
- Penalties: Administrative
- Penalties: Criminal

If a given statute or regulation applied only criminally or administratively, a notation to this effect was made.

In step two, research attorneys conducted the statutory/regulatory research on a jurisdiction-by-jurisdiction basis using a “terms and connectors” query in Westlaw. The query contained the key terms necessary to capture the applicable law in that jurisdiction and policy topic, searching for all relevant codified statutes and adopted regulations in effect as of January 1, 2007 (the endpoint used for this research). During the course of the research, it was found that numerous States had more than one statutory or regulatory provision addressing SIP violations. In these cases, each provision was analyzed separately. If the laws operated in conjunction with each other (e.g., a regulation further defined a more general statutory provision) a single entry in the variables fields was completed. If two separate violations were defined in a single jurisdiction, then two entries were made. Relevant citations were also collected and posted. See Appendix A for an overview of SIP statutes and regulations. See Appendix B for detailed State-by-State results of the statutory/regulatory research.

The most difficult aspect of this type of legal research is the risk that a critical statute or regulation will be inadvertently omitted. States use differing terminology to refer to SIP violations. Although most SIP laws are in the State’s Alcoholic Beverage Control (ABC) laws, this is not always the case, particularly for the penalty variables. For these reasons, the “terms and connectors” search may not capture all relevant data. For States that appeared to contain missing data,

the research was supplemented by (1) examining Westlaw's tables of contents; (2) reviewing secondary sources; (3) examining the *Liquor Control Law Reporter*¹⁵ and the *Liquor Liability Law* treatise;¹⁶ and (4) conducting a "natural language" search in Westlaw.

As discussed in more detail in the findings section, in many cases relevant laws were unclear, making interpretation and categorization difficult or impossible. This problem arose particularly in the research of penalties. The SIP laws frequently did not include penalties or refer to relevant penalty provisions. In these cases, more general penalty provisions apply. These can be located in a variety of places within a State's legal codes, and several may apply. In these circumstances, coding cannot be definitive without referring to internal agency documents or interviewing relevant State personnel, steps that are beyond the scope of this research project. For this reason, the penalty data is not included in the State tables, and the findings are presented in more general terms in the body of the report. When a State law failed to address a given variable, the relevant cell of the table was left blank.

Step three involved a selective review of State case law. The *Liquor Liability Law* treatise was used to identify major cases for each State. Appendix A of the treatise contains State-by-State summaries of key case law. The summaries include references, and the cases were located on Westlaw and downloaded for review. Although the cases focus primarily on dram shop liability claims, many contain interpretations of the SIP laws, which frequently serve as the basis for a finding of dram shop liability. The cases found in the *Liquor Liability Law* treatise were supplemented with additional case law identified in the Westlaw statutory/regulatory research. No attempt was made to identify all case law; such an attempt would be an expensive and technically difficult endeavor with questionable benefits. It would require identification and review of all historical case law and extensive interpretation and conjecture regarding the applicability of a given case to modern circumstances and varying fact patterns. The resulting analysis would therefore of necessity be uncertain and speculative, not justifying the high labor costs involved.

Each case included in the project was analyzed and summarized. Summaries are found in Appendix C.

Enforcement Research

Once the research attorneys completed the legal research, 10 States were selected for additional study in order to confirm findings vis-à-vis statutes, regulations, and case law. Ten law enforcement chiefs from State alcohol beverage control agencies were contacted and asked to participate in semi-structured telephone interviews. The States selected were chosen based on the following criteria:

- States with stringent statutes on sales to intoxicated people;
- States with case laws that appeared to need more clarification or a law enforcement perspective on how case law has affected law enforcement practice;
- Geographically diverse sample of States; and
- Mix of license and control States.

Interviews were conducted with officials from California, Colorado, Louisiana, New Mexico, New Hampshire, Oregon, Texas, Utah, Virginia, and Washington. Every State official who was approached agreed to participate in the key informant interview process.

The first portion of the interview questions aimed at determining the implications of the legal research findings on law enforcement practice. The remaining portions of the interview focused on administrative proceedings, administrative penalties, and the potential roles and responsibilities of local jurisdictions. The list of questions completed during this portion of the project is included as Appendix D.

Based on the results from the legal research and key informant interviews that indicated a comprehensive set of statutes but variation in level of enforcement, three jurisdictions were selected for a deeper-in-depth analysis specific to enforcement and legal practices involved in the adjudication of cases involving sales and service to intoxicated patrons. Onsite, semistructured interviews were conducted with officials from the Baton Rouge Office of Alcoholic Beverage Control, the Louisiana Office of Alcohol and Tobacco Control, the California Department of Alcoholic Beverage Control, the Los Angeles Police Department, the New Mexico Division of Special Investigations, and the New Mexico Division of Alcohol and Gaming. The interview protocol used during these interviews focused on SIP enforcement protocols and procedures, resource allocation for SIP enforcement, and barriers to enforcement. (Appendix E contains the interview protocol used during the three onsite visits.) These key informant interviews form the bases of the three case studies that appear later in this report.

FINDINGS

Legal Research Findings

Legal statutory and case law research produced important findings related to six key elements: (1) types of laws; (2) defendants; (3) definition of intoxication in statutory language; (4) prohibited activities; (5) evidentiary requirements; and (6) penalties.

1. Types of laws: Administrative/criminal

Laws prohibiting alcohol sales to intoxicated people can be either criminal or administrative. Criminal laws are enacted by statute and adjudicated through the criminal justice system. Criminal convictions are considered more serious than administrative violations, as they reflect moral approbation and have potentially serious restrictions on individual freedom. Prosecutors must meet more demanding standards of proof in a jury trial, with sufficient evidence to establish that the defendant committed the crime “beyond a reasonable doubt.”¹⁷ A guilty verdict can result in criminal penalties, including fines and/or imprisonment.

By contrast, administrative laws are adjudicated by executive agencies, typically (although not always) the State’s alcoholic beverage control agency under authority granted by the State legislatures. They are initiated only when an alcohol retail licensee (“licensee”) or one of its employees (“servers”) is alleged to have violated the law. A SIP violation can lead to restrictions on the licensee’s ability to do business through sanctions imposed against the establishment’s license, in the form of fines, suspensions, or revocation. Thirteen States mandate Responsible Beverage Service (“RBS”) programs for servers and have SIP administrative laws.¹⁸ In these States, sanctions similar to those imposed on licensees can also be imposed on the server’s permit. Evidentiary requirements in administrative hearings are not as rigorous and factual findings are made by an administrative judge usually based on the “preponderance of the evidence.”¹⁹

One illegal SIP event may lead to both criminal and administrative action. For example, in a case where a server sells alcohol to an intoxicated person, the server may be charged criminally for making the sale, an administrative action may be taken to suspend the clerk’s serving permit, and the licensee may be charged criminally and/or administratively for the actions of the server. The criminal case will be transferred to the relevant district attorney’s office. The administrative case will be handled by an agency assigned this responsibility, often within the same agency that is responsible for the administrative law’s enforcement.

Most States have both types of laws. (Citations for State statutes can be found in Appendix B, which provides summaries of each State’s laws and regulations.) The same underlying law may provide the basis for either type of proceeding, or two or more statutes and regulations may be present. Only Florida and Nevada have neither type of law at the State level. Nevada cities and counties have primary responsibility for licensing alcohol outlets. Administrative laws prohibiting alcohol sales to intoxicated people may therefore exist at the local level as part of a city or county’s licensing ordinance. This is the case in Las Vegas, by far the largest city in Nevada.²⁰ Rhode Island and Vermont have administrative laws but no criminal penalties. The remaining 46 States and the District of Columbia have both types of laws.

2. Defendants: Who may be found in violation?

Potential violators will differ depending on whether the statute is criminal or administrative, since administrative laws apply only to licensees and servers in States with mandatory RBS programs. Criminal laws can apply to any individual who serves an intoxicated person, whether in a commercial or non-commercial setting (so that they can be applied to social hosts serving in private homes). Twenty-seven of the 46 States with criminal statutes, as well as the District of Columbia, apply them to “any person,” which includes licensees and servers.

The remaining 18 States apply their criminal statutes only to licensees and/or servers (see Appendix A). Texas has one statute that applies to “any person,” but another statute protects licensees from criminal and administrative liability if the licensee’s employees have received RBS training. Texas law therefore applies to “any person” except licensees with trained employees. Wyoming administrative and criminal laws apply only to licensees “with a drive-in area adjacent or contiguous to the licensed room.” This language exempts all non-commercial service and limits its application to a small subset of retail licensees. South Dakota limits criminal liability to licensees and does not include servers.

Forty-eight States and the District of Columbia have administrative laws all of which apply to licensees (every State except Florida and Nevada, which do not have SIP laws). As noted above, the 13 States with mandatory RBS programs and SIP laws may impose separate administrative violations applicable to servers. Texas and Wyoming limit the application of their administrative laws to servers if the licensee has trained its staff (Texas) and to licensees with drive-in areas (Wyoming).

3. Intoxication definition in SIP laws

States use a variety of terms to define the types of service that are prohibited, e.g., to a person who is intoxicated, drunk, visibly intoxicated, obviously intoxicated, has become intoxicated, or is incapacitated due to alcohol consumption.²¹ At least 7 States actually define the term “intoxicated” by statute: Alaska, Arizona, Hawaii, Nebraska, New Hampshire, New Jersey, and Virginia. Although using differing terms, the statutory definitions are similar, referring to alcohol’s observable intoxicating effect on an individual’s physical and/or mental conduct. Virginia, for example, has this definition:

Intoxicated means “a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior.”²²

Alaska uses the term “drunken person,” which has a substantially similar definition:

"Drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into the person's body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages.²³

Nebraska provides the most comprehensive definition by providing a non-inclusive list of visible intoxication indicators in its regulation:

- Problems with balance, inability to maintain balance, e.g., stumbling, staggering gait, bumping into furniture while walking, falling against bar or off stool, head on bar;
- Ineffective muscular coordination, e.g., spilling and/or knocking over drinks, unable to pick up change;
- Strong smell of alcohol;
- Slurred speech, e.g., thick tongue, uncontrollable voice pitch, muttering;
- Bloodshot and/or glassy eyes, e.g., flushed face;
- Condition of clothes and hair, e.g., disheveled appearance, messy hair, unzipped clothing;
- Unusual behavior, e.g., vomiting, profanity, hiccups, fighting, loud, boisterous, obnoxious behavior.²⁴

Definitions for Hawaii and New Hampshire also note that intoxication includes inability to care for self or guard against casualty.

For States that do not define intoxication in their statutes, substantially similar definitions are found in State court opinions. Courts have refused to apply definitions of intoxication or impairment found in other parts of the law, for example, from driving under the influence (DUI) statutes, which define impairment without reference to visible or obvious signs of intoxication.²⁵ Such a substitution would create a strict liability standard whereby servers could be held in violation even if there was no visible basis for the server to determine that the person being served was intoxicated.²⁶ Courts instead infer the requirement that the individual's impairment be "apparent," "visible," or "obvious" when these terms are not included in the SIP statute.²⁷ By creating this inference, courts uphold the statute in the face of challenges that the definition is ambiguous, vague, or arbitrary.²⁸

An additional definitional issue involves the *extent* to which a person's intoxication is visible or obvious. Most statutes do not address this issue. Courts generally interpret the law in a similar fashion, even if not explicit, creating a fluid standard that becomes an issue of fact rather than law. Visible intoxication involves multiple outwardly observable signs of alcohol consumption. Evidence that a person had been drinking is not sufficient, but evidence of heavy intoxication is not required. A Connecticut court, for example, held in one case that the term intoxication requires something more than merely being under the influence of alcohol, but in a later case clarified that a violation does not require showing that the person was "dead-drunk."²⁹

In summary, State statutes use a wide variety of terms for denoting intoxication in their SIP laws, and most provide no definition of the term. Despite the various terms used in State statutes and various case law interpretations, court opinions across States are remarkably consistent in their interpretations of these laws.

4. Prohibited activities

Most States use a variety of terms to denote that any furnishing to an intoxicated person is prohibited.³⁰ New Mexico, for example, prohibits the "selling, serving, procuring, or aiding in the procurement of alcoholic beverages to an intoxicated person." Georgia's law uses the terms "sold," "bartered," "exchanged," "given," "provided," or "furnished"; the District of Columbia's

law uses the terms “sale” or “delivery”; and Delaware’s law uses only the terms “sell” or “serve.” The variation in terms probably has no legal significance, so long as any exchange of the alcoholic beverage from the server to the intoxicated person is included. Four States – Rhode Island, South Carolina, Tennessee (off-sale retailers only), and Virginia – only prohibit “sales” in their SIP laws. This creates the possibility that their statutes do not apply to other forms of delivery, such as gifts. A court or administrative agency may interpret the provision to avoid this artificial distinction, at least as the law applies to commercial vendors. For example, the term “sale” may be defined elsewhere in the State law to include gratuities.³¹

At least 15 States and the District of Columbia have an explicit provision that prohibits allowing intoxicated people to consume alcohol on licensed premises (see Appendix A), and may also prohibit remaining or loitering. The prohibition can either be included in the list of other prohibited acts or be listed as a separate offense. As discussed below, this violation may involve differing evidentiary requirements and may involve separate penalties.

Tennessee has a unique provision that prohibits off-sale retailers to sell to any person who is accompanied by a person who is drunk.³² Alaska has a separate provision applicable to those “receiving compensation for transporting alcoholic beverages.”³³

5. Evidentiary requirements

Although there is a de facto national standard for defining intoxication, States vary widely in what evidence is required to establish a SIP violation. The analysis is complicated by the fact that many States have multiple statutes that may have differing evidentiary standards, with criminal proceedings likely to have stricter standards than administrative hearings. As discussed below, in most cases State statutes and regulations provide little or no guidance, leaving it ultimately to the courts to determine the proper standards to be applied.

A central concern is whether State law requires evidence of the mental state of the server at the time of the service. Eight statutes define the offense as “knowingly” providing alcohol to the intoxicated person. In these States, evidence of a purchaser’s intoxication must be presented from which the fact finder can infer that the server knew that the person being served was visibly intoxicated. This is sometimes described as a “subjective” rather than an “objective” standard – evidence is required from which the fact finder can infer that the server was actually aware that the patron was intoxicated. As described by an Indiana court:

“To prove violation of the [SIP] statute, the provider's knowledge must be shown by a subjective standard, not an objective one. ... [It] requires proof that the provider either had as his conscious objective, or was aware of a high probability, that he was providing alcoholic beverage to an intoxicated recipient.”³⁴

At least four additional State laws (Arizona, New Mexico, Utah, and Virginia) explicitly use a negligence standard, often defined in terms of evidence that the server knew or *should have known* or *had reason to believe* that the patron was intoxicated based on the circumstances of the service. This is sometimes referred to as an “objective” standard. Evidence that addresses the server’s perspective is still required, but the subjective mental state is not necessary. Evidence of the circumstances surrounding the service can be used to demonstrate that a “reasonable person”

would have refrained from providing alcohol to the intoxicated person even if the server did not have actual knowledge of the visible intoxication.³⁵

Statutes in two States – Alaska and Texas – use a “criminal negligence” standard, requiring evidence of the server’s failure to perceive risk. In practice, evidence of criminal negligence falls between the two standards described above: There needs to be clearer evidence that the server should have known (sometimes described as reckless disregard), but actual knowledge need not be established.³⁶

In States that require evidence of the server’s state of mind, direct evidence of the service is clearly required – that is, evidence that directly establishes that a particular server provided alcohol to an intoxicated person. Testimony by a law enforcement agent that he/she observed a visibly intoxicated patron being served by a named server provides a classic example of direct evidence of the offense being committed. The stricter the standard, the more compelling the direct evidence needs to be. Inferring actual knowledge on the part of the server is much more difficult to prove than establishing that a reasonable person would have recognized the intoxicated state of the patron.

Indirect, circumstantial evidence is relevant to the determination of the server’s state of mind, but not sufficient standing alone to support a finding of a violation. Drink counts, blood alcohol concentration (BAC) readings, observations made after the service (e.g., at a DUI arrest), and observations by law enforcement officers or other patrons after the service was made are examples of indirect evidence.

The remaining States and the District of Columbia do not reference the mental state of the server in their statutes. In these jurisdictions, direct evidence of the server’s provision of alcohol to an obviously intoxicated patron is clearly sufficient, but not necessarily required, to establish the offense. Courts may allow a case to go forward based on indirect evidence, from which the trier of fact can infer that an illegal sale occurred. In some cases, indirect evidence may be sufficient to establish that a server should have known of the patron’s intoxication, even if there is no actual observation of the service. For example, a New York court allowed a case to proceed against a restaurant where the evidence included the following: (1) testimony of a police officer regarding the intoxicated behavior of a patron one hour after the patron left the restaurant; (2) the patron’s BAC of .20 grams per deciliter (g/dL) 90 minutes after his crash; and (3) the testimony of an expert regarding the likelihood that the patron’s intoxication was visible based on the BAC reading.³⁷ In Oklahoma, a similar case included evidence that the staff had not received RBS training and the conditions of the bar made observation difficult or impossible.³⁸ A Georgia court allowed a dram shop case to proceed with no direct evidence of the server’s observation of the patron. The evidence included expert testimony regarding acute alcohol intoxication at particular BAC readings, the length of time spent by the patron in the establishment, and testimony that the patron had not eaten for more than 24 hours (thus increasing the alcohol’s intoxicating effects).³⁹ In Massachusetts, the court allowed a case to proceed where the evidence of obvious intoxication was the number of drinks the patron consumed.⁴⁰ None of these cases included any direct evidence that a particular server had served the intoxicated patron.

Courts may infer a server mental component and/or require direct evidence without specific statutory reference. The Hawaii statute, for example, is silent on the matter, but the State's courts have required evidence that the server knew or should have known of the patron's intoxication.⁴¹ A Vermont court, interpreting a similar Vermont's regulation, has held that direct evidence is required: "[T]he observation [of the visibly intoxicated person] must be made by the one selling the liquor. It is not enough that the purchaser's intoxication was apparent to someone else."⁴²

Courts may allow circumstantial evidence to be presented, but may determine that it is insufficient as a matter of law to support a conviction. A Massachusetts court, for example, drew the line at a patron's admission that he was intoxicated at the time he was served to be evidence sufficient to establish that his intoxication was observable.⁴³ On the other hand, the knowledge requirement should not be interpreted literally. A server cannot avoid a violation by being willfully ignorant of the patron's intoxicated condition.⁴⁴

Courts are more likely to infer a knowledge element in criminal prosecutions, which involve judgments regarding personal wrongdoing. Administrative violations do not necessarily involve proof of personal intent or wrongdoing and can be treated akin to traffic tickets or findings of public nuisance.

Two State statutes specify that BAC readings can be used as evidence in determining obvious intoxication. In Nebraska, a BAC reading of .10 can be used as an indicator of obvious intoxication, but at least one additional indicator is required before a violation can be found. Courts may allow such evidence without it being specified in the law.⁴⁵

New Mexico has enacted a unique regulation regarding evidentiary requirements that addresses the burden of proof. It provides that circumstantial evidence that the person served had a BAC of .14 or higher within one hour of the service of alcohol creates a rebuttal presumption that the person was visibly intoxicated for the purposes of a SIP violation. Once the prosecution establishes the rebuttal presumption by introducing evidence of the patron's BAC level, the defendant has the burden of establishing the lack of visible signs of intoxication. Since there is often conflicting evidence regarding visible signs of intoxication, this shift in the burden of proof can significantly increase the chances that the prosecution will prevail.

As noted above, at least 16 States have additional prohibitions against allowing intoxicated people to consume alcoholic beverages and/or remain on a licensed premise. These provisions do not require evidence of an actual exchange of alcohol from the server to the intoxicated person, and there may be differing evidentiary requirements regarding server knowledge and direct evidence of the intoxicated person consuming or remaining on the premises.⁴⁶ In most cases, the statutes and regulations do not provide guidance in this regard. Oregon law provides an exception to this general finding. It has a knowledge requirement included in both of its provisions.

6. Penalties

Analysis of SIP penalties is complex due to three primary factors: (1) As discussed above, SIP laws involve two distinct sets of penalties – criminal and administrative – each with distinct penalty provisions. (2) Many States have multiple criminal and administrative provisions, each of

which may involve differing penalties. (3) Most States do not specify what the penalties are for SIP violations in the SIP statutes and regulations. In these cases, reference is made to general penalty provisions that apply to multiple offenses. There may be multiple general penalty provisions, and it is often difficult or impossible to determine which apply to the SIP laws. Our research provides an overview of the State penalty structures focusing in particular on laws that specify SIP penalties.

Criminal penalties

Criminal penalties are specified by State legislatures in State statutes. Of the 47 jurisdictions with criminal statutes, 45 appear to permit imprisonment, with maximum terms ranging from no imprisonment (Maine and Washington) to three years (New Jersey), with most States falling in the six months to one year range. Delaware and Pennsylvania impose jail sentences only if the specified fines are not paid.

Fines may be imposed either instead of or in addition to imprisonment, with maximum fines also varying widely by State. Alaska permits fines up to \$10,000, while New York and Utah do not impose fines for SIP violations. Seventeen States have a \$500 maximum and 15 States have a \$1,000 maximum fine for first offenses. North Carolina permits fines at the judge's discretion without providing a statutory maximum. Two States allow for additional punishment beyond fines and imprisonment: Delaware requires the defendant to pay the costs of the prosecution, and North Carolina permits "seizure of alcoholic beverages; forfeiture of related property; and restitution to the law enforcement agency."

Minimum penalties may be provided. At least 13 States impose minimum fines, ranging from \$50 (Missouri and Massachusetts) to \$500 (Illinois). New York and North Carolina impose a minimum imprisonment terms of 15 days and 1 day, respectively; Idaho, New Jersey, and Louisiana give the judge discretion to impose either minimum fines or minimum jail terms.

At least 6 States (Arkansas, Kentucky, Pennsylvania, Rhode Island, South Carolina, and Texas) have established graduated penalty structures, with relatively more severe penalties imposed for repeat offenses. Four States (Arizona, Colorado, New Hampshire, and Utah) have differing penalties depending on what type of crime is charged. Utah imposes stiffer penalties if the seller or server had knowledge that the person served was intoxicated. Arizona, Colorado, and New Hampshire give discretion to the prosecutor regarding the type of offense to be charged, with differing penalties possible. In New Hampshire, the crime may be treated as a felony or misdemeanor; in Colorado as a petty offense misdemeanor; and in Arizona, as a choice of two types of misdemeanors.

Numerous exceptions or special provisions create additional distinctions. Colorado, for example, treats furnishing alcohol to an intoxicated person as a misdemeanor (punishable by fine and/or imprisonment) and allowing an intoxicated person to loiter on the premises as a petty offense (punishable by small fine). Tennessee has differing penalties for on- and off-sale premises; Louisiana and West Virginia base penalties in part on the type of alcohol being served.

As noted above, criminal penalties may be specific to a given crime or general for a class of crime (e.g. misdemeanor, felony). In most cases, punishments are not specifically provided in SIP laws, so that reference must be made to general statutes. This explains at least in part the relatively high maximum fines/jail terms and the limited number of statutes that provide minimum and graduated penalties. General penalty statutes are designed to apply to a wide variety of crimes, these statutes typically contain high maximum penalties and give wide latitude to prosecutors and judges in their choices of punishment.

Administrative penalties

Administrative penalties may be imposed by State statute, administrative regulations, and/or agency internal guidelines. For SIP violations, the target is the alcohol retail operator's license or the alcohol server's permit. As with criminal violations, most State statutes and regulations applicable to SIP violations are general in nature (and apply to numerous violations), so these statutes provide minimal guidance to administrative agencies regarding adequate penalties. Previous research suggests that many administrative agencies have developed internal sentencing guidelines to augment these general provisions.⁴⁷ Our legal research focused solely on statutory and regulatory law so did not capture these more informal administrative procedures.

All but one State with administrative laws have statutory provisions that permit revocation of a retailer's license for a single SIP violation and either explicitly or implicitly allow lesser penalties, including fines and suspensions. Missouri's law permits revocation for an administrative violation and mandates revocation after a criminal SIP conviction. Oregon's statute prohibiting sales to intoxicated people allows for cancellation of the license; its statute making it a violation to allow an intoxicated person to continue drinking imposes only letters of reprimand for the first three violations within a two-year period and specifies that the violations shall not be used in determining a licensee's record of compliance when applying for renewal. South Dakota permits only fines (and not license suspension or revocation), even for multiple offenses. As noted above, two States – Florida and Nevada – have no State law, and Wyoming's law is limited to retailers with drive-in facilities where purchases can be made from a motor vehicle that has pulled up to the establishment's drive-up window.

Several States provide statutory or regulatory guidelines or limitations on this broad grant of authority to administrative agencies. For example, New Mexico and Washington permit revocation after a single offense only when aggravating circumstances exist. New Hampshire requires consideration of aggravating circumstances, the licensee's record of past violations, the danger posed to public health and safety, and any adverse impact of the licensee's business on the community. Maryland and North Carolina allow licensees to offer to pay fines in lieu of revocation, although their agencies are not required to accept them.

Eleven States have established tiered or graduated penalty schedules (see Table 1), providing harsher penalties for repeat offenses. The schedules vary widely in the penalties provided and the extent to which they are mandated. Ten of the 11 permit agencies to impose harsher penalties, including revocation in at least some circumstances. Nine of the 11 do not mandate that any penalty be imposed, so the administrative agency can also decide to impose lesser or no penalty for a violation. Oregon's regulation lists specific aggravating and mitigating cir-

cumstances that may affect the penalty guidelines. Rhode Island mandates that a fine be imposed, but only provides the maximum amount of the fine, which does not increase after the second violation. The time period for counting repeat offenses varies from one to five years.

New Mexico's regulation is noteworthy. It imposes minimum, increasingly severe fines and suspensions for the first two offenses in one year, and the third offense in one year leads to a \$10,000 fine and mandatory revocation. The third offense penalty can be imposed in cases where the server is shown to have knowingly violated the SIP law.

Administrative penalties assessed against alcohol servers (in the 13 States that have SIP laws and mandated server RBS training) vary across jurisdictions. Louisiana and Washington apply the same penalties to server permittees as licensees. Oregon establishes a lesser fine than that imposed on licensees for a server's first offense.⁴⁸ New Mexico imposes a separate tiered penalty structure for servers: first offense – up to \$500 fine or 30-day suspension; second offense – up to \$500 fine and/or 1-year suspension; third offense – fine, suspension and/or revocation. Alaska appears to impose only criminal penalties on server violators; a server criminal conviction can be the basis for administrative penalties imposed on the licensee.

Participation by licensed establishments in RBS programs may mitigate administrative penalties. As noted above, Texas law provides the broadest mitigation, insulating licensees from acts committed by their servers if the licensee successfully participated in the State's voluntary RBS program. Louisiana prohibits the suspension or revocation of a license for the first offense if the licensee establishes it is a responsible vendor on the State's mandatory RBS law. Pennsylvania law requires a reduction in fines if the licensee has successfully participated in the State's voluntary RBS program. Agencies may reduce penalties in this manner as a matter of internal policy without specific statutory authorization.

As this summary suggests, the laws of most States give wide latitude to administrative agencies in determining penalties for SIP violations. Only a small number of State statutes and regulations impose limits on the agency's discretion or on mandatory, structured punishment structures. Previous research found that agencies seldom if ever use their authority to revoke a retail license for a SIP violation.⁴⁹ Some State agencies have established internal penalty guidelines and others address SIP violations on an ad hoc basis. As discussed later in this report, the lack of attention to penalties in such a large number of States probably reflects the lack of enforcement. If cases are not brought before the administrative agency, there is no need to develop formal penalty guidelines.

Table 1: Tiered Administrative Penalties for Licensees

State	Period	Mandated	1 st Offense	2 nd Offense	3 rd Offense	4 th Offense	Additional
AK ¹	5 years	no	45-day suspension	90-day suspension	Suspension or revocation		Revocation permitted.
DC ²	See offenses	no	\$1,000 to \$2,000 fine	\$2,000-\$4,000 fine (2 years)	\$4,000-\$6,000 fine (3 years)	Revocation (4 years)	Revocation permitted.
LA ³	3 years	no	\$50-\$500 fine	\$250 to \$1,000 fine	\$500 to \$2,500 fine		Revocation or suspension permitted.
MS ⁴	1 year	no	\$500-\$1,000 fine and/or 3-month suspension	\$500-\$2,000 fine and/or 6-month suspension	\$2,000-\$5,000 fine and/or suspension or revocation		Light beer and wine permit holders only. Revocation permissible for other types of permit holders.
NJ ⁵	2 years	no	15-day suspension	30-day suspension	45-day suspension	Revocation	Revocation permitted.
NM ⁶	1 year	yes	\$1,000-\$2,000 & 1-day suspension	\$2,000 to \$3,000 fine & 7-day suspension	\$10,000 fine and revocation		Knowingly provided: \$10,000 fine, suspension, or revocation permitted for single violation
NC ⁷	None provided	no	\$500 fine	\$750 fine	\$1,000 fine		3-year suspension and revocation permitted
OR ⁸	2 years	no	\$1,650 fine or 7-day suspension	\$4,950 fine or 30-day suspension	30-day suspension	Revocation	Aggravating//mitigating circumstances listed
RI ⁹	3 years	yes	Fine not to exceed \$500	Fine not to exceed \$1,000			Suspension or revocation permitted.
SD ¹⁰	2 years	no	\$500 fine	\$700 fine	\$1,000 fine		
WA ¹¹	2 years	no	\$500 fine or 5-day suspension	\$2,500 fine or 5-day suspension	\$5,000 fine and 10-day suspension	Revocation	Aggravating circumstances can lead to stiffer penalties.

¹ AK ST § 04.16.180.

² DC ST § 25-830; 23 DC ADC § 801; DC ST § 25-823.

³ LSA-R.S. 26:96

⁴ Miss. Code Ann. § 67-3-69.

⁵ N.J.A.C. 13:2-19.11, N.J.S.A. 33:1-31.

⁶ N.M. Admin. Code 15.10.61; NMSA 1978, § 60-6C-1.

⁷ N.C.G.S.A. § 18B-104.

⁸ Or. Adm. Rules § 845-006-0500; O.R.S. § 471.315.

⁹ Gen. Laws, 1956, § 3-5-21.

¹⁰ SDCL § 35-4-78.3.

¹¹ WAC 314-29-020; WA ADC 314-29-015.

Enforcement Research Findings

The single most notable finding from the enforcement research is that **SIP enforcement is relatively rare**. Lack of enforcement appears to be due to three main factors: cultural norms and lack of political will; resource limitations; and statutory provisions. Other noteworthy findings concern factors that affect (or would affect) enforcement practice where SIP enforcement occurs: imposition of penalties; interagency collaboration; training; and use of technology.

1. Cultural norms and lack of political will

A culture that tolerates excessive drinking or that supports the idea that bars are appropriate places for patrons to become intoxicated presents a challenge for effective SIP enforcement. These cultural norms may be pervasive, not only among community members, but also within the enforcement agencies. In such settings, it is unlikely that greater resources or training would provide the key to stepped-up enforcement.

Lack of political will to create laws, regulations, or other enforcement policies also serves as a barrier to SIP enforcement. Several interviews produced comments attesting to the belief that SIP enforcement would not increase in the absence of the willingness of high-ranking policy-makers and administrators advocating an increase. It was generally agreed that this lack of political will stems from unwillingness to establish any policy that that could be interpreted as having an adverse impact on commerce (e.g., tourism industry, hospitality industry).

It is noteworthy that the State for which active SIP enforcement was evident, New Mexico, a significant increase in enforcement was directly attributed to the governor's decision to make SIP enforcement a public safety priority. Due to this prioritization, recent rule changes in the State increased fines and penalties for SIP violations by licensed establishments. The Alcohol and Gaming Division (within the Department of Public Safety) must also report all licensing actions to the Office of the Governor. With this reporting, licensees found in violation have received stiffer penalties than they had in the past. Thus, the New Mexico example lends support to the reports from enforcement authorities interviewed in other States on the importance of political will to active SIP enforcement.

2. Resource limitations

While States and local enforcement agencies may desire a more coordinated and comprehensive SIP enforcement program, lack of resources prevents this from happening. All States noted that the bulk of alcohol enforcement work is directed to underage drinking enforcement and prevention, often leaving any SIP enforcement program with inadequate resources.

SIP enforcement can be a time-consuming endeavor that yields minimal results in terms of potential penalty, unlike minimum purchase age (MPA) retail compliance checks. MPA compliance checks center on an alcohol purchase attempt by a youth and last only a few minutes. As discussed in the legal research findings section above, many SIP laws have demanding evidentiary requirements even for administrative violations. During SIP investigations, undercover agents may need to spend several hours in an establishment and still not observe anyone sufficiently intoxicated to bring administrative action, and because of the need for adequate evidence and the potential physical altercations at least two (and sometimes more) agents may be assigned

to the case. When conducted (most often in response to a complaint), SIP enforcement often ties up too many resources for too much time, given the many other demands on the agency.

Among the States interviewed, only one local agency, the Los Angeles Police Department (LAPD), appears to have made sales to intoxicated people a priority matter due primarily to its statistics on police calls for service for criminal incidents in close proximity to bars. LAPD's "Drunk Decoy" operations involve undercover officers posing as drunk patrons seeking to purchase alcohol. These operations should not be confused with SIP investigations since they do not result in citations (no intoxicated patron is involved). The purpose is to assess retail practices at establishments that appear to violate the law and then to use the results of this assessment to encourage and justify the need for the establishment's participation in RBS training. Although Drunk Decoy operations require less time than SIP investigations to conduct, they still require considerable resources since two-agent teams are required for safety concerns.

The decision to increase SIP enforcement in New Mexico was also facilitated by data. Licensed establishments produce 58 percent of DWI arrests in the State. This statistic was made possible thanks to agency recordkeeping that collects place of last drink data on DUI arrest reports and retains this data and other data on licensees in a format that lends itself to analysis. This and complementary data analysis is presented to the Governor in an annual SIP report.

The prioritization of sales to intoxicated people in both New Mexico and Los Angeles can be related back to resources for a different purpose. Data collection and recordkeeping link to any jurisdiction's ability to document the need for SIP enforcement. In the absence of resources to collect meaningful data and maintain such data in useful formats, SIP enforcement remains a low priority. For example, data collection in Baton Rouge is quite basic and maintained largely in paper format. Moreover, statistical data is generally kept in a simple spreadsheet with little, if any, data analysis conducted.

3. Statutory provisions

Certain legal barriers impact enforcement efforts. As discussed in the legal research findings section above, if a SIP violation requires proof of certain elements that are difficult to corroborate, then enforcement agencies are likely to forgo enforcement. In Oregon, for example, seller knowledge of patron intoxication at the time of continued service is an element of the State's law. This has proven to be a barrier to enforcement since enforcement administrators recognize that this "mental state" element can be difficult to prove. Conversely, States that do not include any mental state element in the law establish the lowest burden of proof and are less likely to encounter legal challenges. Consequently, States with laws that do not require proof of server's mental state are more conducive to enforcement.

The New Mexico SIP law employs a negligence standard, permits indirect evidence as a basis for finding a violation, and creates a rebuttal presumption that a person with a BAC of .14 or higher within an hour of being served was obviously intoxicated at the time of service. These legal reforms overcome many of the barriers to enforcement found in the laws of other States. Its implementation has encountered a significant barrier, however. Some enforcement agents have misinterpreted the regulation to mean that additional evidence beyond the BAC reading is not necessary. This is not the case. The regulation creates only a rebuttal presumption, and it should be

assumed that licensees will provide evidence that despite the BAC level, the patron was not visibly intoxicated at the time of sale. The regulation anticipates this by introducing the BAC presumption with the phrase, “In addition to other commonly recognized tests of intoxication.” It is critical that enforcement personnel collect additional evidence of visible intoxication. This points to the need to train those charged with enforcing the law regarding proper techniques and interpretations of relevant legal provisions, a topic addressed below.

4. Penalties as a behavior change incentive

States reported that adequate civil penalties for violators of SIP laws could provide deterrence for repeat behavior. Frequently, however, other penalties are crafted for licensees charged with a violation either through negotiated pre-hearing settlements or as a condition to be met in order to avoid suspension or other disciplinary action against the licensee. In other instances, for example in Texas, a licensee is immune from penalties if the server or seller received RBS training.

In New Mexico, stiff penalties appear likely to serve as an effective deterrent for licensees. (See New Mexico Case Study later in this report.) Administrative penalties for licensees and servers/sellers follow a graduated approach, with a fine and suspension of alcohol license/server certification possible for even a first offense.

5. Interagency collaboration

The responsibility for alcohol law enforcement differs from State to State. A few States rely solely on the State ABC department, other States parse out enforcement efforts among local agencies, and still others may coordinate efforts between both local and State agencies. Drawing from the underage drinking enforcement model in many States, a coordinated effort appears to provide the most comprehensive and organized structure for SIP enforcement.

The Effects of Increased Penalties for Licensees

New Mexico imposes license revocation for establishments that violate the State’s SIP law three times within a 12-month period. Since these increased penalties went into effect, six establishments find themselves facing license revocation.

An establishment owner is entitled to a hearing with the Department of Regulation and Licensing’s Alcohol and Gaming Division. If convicted, the license will be revoked and the license holder will not be allowed to sell or transfer the license. In addition, a licensee could be fined as much as \$10,000.

The California ABC provides partial funding to LAPD’s Drunk Decoy program, and has shared information about the program with other local enforcement agencies in the State. The agency also disburses funds to local law enforcement agencies through its Grant Assistance Program or “GAP” grants that focus on increasing enforcement of alcohol beverage laws, with a special emphasis on underage drinking laws. The training conducted for GAP grantee agencies includes tactics for conducting SIP enforcement, and as a result of this training, five other agencies in the State have begun implementing SIP enforcement activities, (e.g., Drunk Decoy operations, undercover SIP investigations).

While Baton Rouge ABC does not focus specifically on SIP enforcement, there appears to be an excellent working relationship between the agency and the Louisiana Office of Alcohol and Tobacco Control, the Baton Rouge Police Department and the East Baton Rouge Parish Sheriff’s Department on underage drinking enforcement. This multi-agency collaborative model repre-

sents an ideal approach for conducting SIP enforcement operations if the political will and other factors existed.

6. Proper training

Effective SIP enforcement requires specialized training for enforcement officers. It is important to understand the burden of proof required to establish “intoxication” and to collect sufficient evidence to establish each element of the State’s SIPS law. New Mexico officials noted that more training is needed on collecting evidence despite the .14 g/dL BAC presumption.

Training on SIP enforcement is required for all law enforcement agencies that receive GAP grants from the California ABC. It is noteworthy that even though the GAP program emphasizes underage drinking enforcement, a few GAP grantee agencies have decided to use some funding to conduct SIP-related enforcement activities after receiving SIP enforcement training.

7. Use of technology

Interview data indicates that greater use of technology would facilitate SIP enforcement. Portable breathalyzers can be of tremendous utility in States where statutes do not require that officers observe actual sales of alcohol to an intoxicated person, as in New Mexico. Another desired use of technology involves videotaping an intoxicated patron at time of arrest for use as evidence. As one interview respondent noted, 30 seconds of videotape makes a powerful Statement that is much more difficult to challenge than verbal testimony by an officer. Such footage can also help to meet evidentiary requirements that require the prosecution to demonstrate that servers/sellers should have known or had reason to believe that a patron was intoxicated or that a “reasonable person” would have detected intoxication.

In the section that follows, three case studies of SIP law enforcement practice follow. As stated previously in this report, these case studies are based on qualitative data gathered through semi-structured interviews with two key informants in each State. The States selected for the case studies reflect different levels of SIP enforcement practice, ranging from little enforcement to regular, high-profile enforcement.

CASE STUDY: BATON ROUGE, LOUISIANA

City of Baton Rouge Office of Alcoholic Beverage Control

The Office of Alcoholic Beverage Control and Gaming Enforcement licenses and regulates all businesses and individuals in East Baton Rouge Parish who sell, serve, or dispense alcoholic beverages. In an effort to maintain compliance with the State laws, all businesses are routinely inspected by ABC investigators and all complaints are investigated.

There are approximately 10 full-time employees in the Office of ABC and Gaming Enforcement, of whom 3 serve as alcohol enforcement agents. When necessary, other investigators in the office assist with alcohol enforcement work. Nearly all of the agency's resources (an estimated 95%) are devoted to background investigations for applicants for alcohol permits (i.e., licenses) and dealing with underage sales/possession.

Applicants for alcohol licenses are required to attend RBS training conducted by the office before the license will be granted. Licensees who violate the State SIP law are subject to disciplinary action and may have their licenses suspended or revoked. When cited for a violation, a licensee is entitled to a hearing. This hearing is typically held before the agency bringing the charge (State or local), but may be cited by both agencies if there are particularly aggravating circumstances.

The Problem of Alcohol Sales to Intoxicated People

The State and local enforcement authorities interviewed for this case study did not consider sales of alcoholic beverages to intoxicated people a significant problem in the city; however, the enforcement authorities did believe that there were problems associated with alcohol consumption by college students in the parish. These problems include impaired driving, assault, vandalism, and other acts of irresponsible behavior.

SIP Enforcement

Investigations into the sale of alcohol beverages to intoxicated people can be conducted by either ABC investigators or local police department officers. During investigations, undercover agents/officers working as a team enter and remain in a licensed alcohol establishment for a period of time (often several hours) to observe server or seller practices. An establishment employee who serves or sells alcohol to an intoxicated person may be criminally cited for the sale by the undercover officer. In addition to issuing the criminal citation, the undercover officer will also refer the case for administrative action.

Enforcement of the State's SIP laws is not perceived to be a priority concern for the city's enforcement agency, and when such enforcement occurs, it is in response to complaints about nuisance establishments or situations involving an intoxicated person so inebriated that he is an immediate threat to himself or others.

According to the individuals interviewed for this case study, two reasons account for the "low priority" status of SIP enforcement. First, many Louisiana residents have long-standing traditions around drinking and partying, with a "let the good times roll" attitude pervading daily life in many parts of the State. The second reason cited by the interviewees is a lack of political will

to create enforcement policies that could have an adverse impact on tourism and the hospitality industry.

In spite of these barriers, the officials interviewed for this case study believed that if more funding were made available, SIP enforcement would increase. It was speculated that such enforcement would be used to pay overtime costs for officers to conduct SIP investigations targeting the establishments frequented by college students.

While the Baton Rouge ABC does not focus specifically on SIP enforcement, it is clear that its staff communicates and coordinates enforcement operations and initiatives with other agencies such as the Louisiana Office of Alcohol and Tobacco Control, the Baton Rouge Police Department, and the East Baton Rouge Sheriff's Department. These agencies have formed a task force to address underage drinking, and coordination efforts appear to be focused on this issue.

Financial and other resource constraints on law enforcement agencies in general were noted as contributing to at least two enforcement-related issues. The level of collaboration among local agencies is sometimes at the mercy of funding. For example, there was a period of time during which the East Baton Rouge Sheriff's Department had to withdraw from the task force on underage drinking, and this temporary departure affected the level of active enforcement in this area.

Financial constraints also contribute to the State of records maintenance for the agency. Records maintenance is basic, with many paper documents awaiting imaging before storage. Statistical information is generally kept in basic spreadsheet software with very little, if any, analysis conducted. For example, the total number of arrests for a specific period of time can be calculated, but there is no way – short of searching by hand – to ascertain how many charges were made for a specific arrest.

Prosecution of SIP Cases

Louisiana's SIP law holds retail alcohol permit holders (i.e., licensees) and their employees liable for selling or serving any alcoholic beverage to an intoxicated person. Violations are subject to both criminal and civil penalties. Criminal penalties may include a fine of not less than \$100 and not more than \$500, imprisonment for not less than 30 days and not more than 6 months, or both a fine and imprisonment. Civil penalties may include suspension or revocation of a server's permit or a fine. Criminal prosecution of SIP cases is rare.

According to the officials interviewed for this case study, the Louisiana SIP statute is not burdensome. It does not include a provision addressing the mental state of the seller of alcohol, and successful prosecutions would simply have to prove that sale or service of an alcoholic beverage to a visibly intoxicated person occurred. In the few SIP cases that are pursued annually, the key element of evidence involves an undercover investigator/agent's observation of the sale or service of alcohol to a patron displaying signs of intoxication (slurred speech, lack of coordination, glassy eyes, etc.). As reported by agency officials, ideally the observation of the sale is supported by a procured sample of the beverage served (for analysis), but other evidence can establish that the product is an alcoholic beverage; for example, statements from the intoxicated person or server, viewing the bar tab, and the observation of the investigator/agent as to the color, smell, etc., of the product.

When a permittee is charged with a SIP violation, an administrative violation report is submitted to the ABC Board for processing. The board will docket the case for hearing if not settled beforehand through negotiated settlement or payment of the fine according to a schedule. The adjudication process can take as few as 10 days if the fine is paid and the hearing is waived. If a hearing is docketed it may take 2 to 3 months. Cases may be appealed to a local court. The officials interviewed for this case study reported that the hearing process works fairly well.

Key Findings

Louisiana's SIP law and SIP enforcement includes several noteworthy elements:

- State law does not impose a standard on the mental state of the seller/server of alcohol at the time of sale/service to the intoxicated person. This is advantageous to prosecution in that seller/server knowledge of patron intoxication is not required.
- The State employs a graduated approach to sanctioning licensees whose establishments violate the law. These graduated penalties are based on a 3-year time period initiated at the time of the first violation.
- SIP enforcement is weak due to cultural attitudes regarding drinking and lack of political will to enact policies that are perceived to have an adverse impact on the hospitality industry and tourism.
- SIP investigations that do occur are in response to complaints, and such cases often result in fines (following the predetermined penalty schedule). These fines are often on the lower end of the allowable range.

The law enforcement authorities consulted for this case study were in agreement that alcohol sales to intoxicated people in Louisiana was not a significant problem in the city in general, but they did believe the problem exists, particularly among college students. Perhaps not surprisingly, they recognized that the chief barrier to implementing greater enforcement was lack of financial resources. Given that the law is relatively favorable to the prosecution of cases, it is unfortunate that greater support for enforcement of SIP laws is lacking.

Administrative Penalties for Permit Holders

Administrative penalties for violations include the possibility of permit suspension or revocation. In lieu of suspension or revocation, fines may be imposed according to the schedule below.

- 1st offense: Fine of not less than \$50 and not more than \$500.
- 2nd offense within 3 years of 1st violation: Fine of not less than \$250 and not more than \$1,000.
- 3rd offense within 3 years of 1st violation: Fine of not less than \$500 and not more than \$2,500.

Permit suspension or revocation is not possible for a first offense or if the permit holder is deemed a "responsible vendor" as indicated by certification of his/her participation and of the participation of his/her employees in a State-approved RBS training program, and the maintenance of certification.

The few SIPS cases that are pursued generally result in a \$250 fine for a first violation unless there are aggravating circumstances (e.g., sale to an intoxicated minor). Subsequent violations produce harsher penalties.

CASE STUDY: CALIFORNIA

The California Department of Alcoholic Beverage Control

The California Department of Alcoholic Beverage Control Administration (CABC) is a State agency charged with overseeing the provisions of the California Alcoholic Beverage Control Act. Its mission is to meet its responsibilities in a manner that fosters and protects the health, safety, welfare, and economic well-being of State residents.

There are approximately 77,000 alcoholic beverage licensees in California. CABC employs 165 field investigators based at 24 field offices throughout the State to enforce State alcohol laws. Investigators are sworn peace officers empowered to investigate and make arrests for violations of the Business and Professions Code that occur on or about licensed premises.

Licensees who violate applicable State laws or local ordinances are subject to disciplinary action and may have their licenses suspended or revoked. These licensees are entitled to a hearing before an administrative law judge and an appellate process to the California Supreme Court.

The Problem of Alcohol Sales to Intoxicated People

According to both the State and local enforcement authorities interviewed for this case study, the sale of alcoholic beverages to intoxicated people in California is a problem that merits greater attention. One indicator of this need is police calls for service to bars in response to assaults, vandalism, and public indecency complaints. Other indicators include DWI arrests, traffic crashes and fatalities, sexual assaults, and cases of domestic violence.

SIP Enforcement

Investigations into the sale of alcohol beverages to intoxicated people can be conducted by either CABC investigators or local law enforcement department officers. During investigations, undercover agents/officers enter and remain in a licensed alcohol establishment for a period of time in order to observe server or seller practices. An establishment employee who serves or sells alcohol to an intoxicated person will be criminally cited for the sale by the undercover officer. In addition to issuing the criminal citation, the undercover officer will also refer the licensee for administrative action.

Enforcement of the State's SIP laws is not perceived to be a priority concern for State policy-makers and administrators. Chief among the reasons for this is the agency's emphasis on enforcement of underage drinking laws due to Federal grant funding for such work from the U.S. Department of Justice. It was also noted that the sometimes time-consuming nature of SIP investigations and the evidence requirements for successful prosecution of SIP cases may also hinder enforcement administrators' desire to engage in proactive SIP investigations, particularly in light of the CABC's limited resources.

The State official interviewed for this case study affirmed that if more funding and other resources were made available, SIP enforcement would increase. He indicated that State investigators would be required to conduct more on-premise and off-premise establishment visits. In addition, local agency recipients of CABC grants for enforcement would be required to conduct SIP investigations in addition to underage drinking law enforcement operations. Using the level

of Federal support for underage drinking enforcement as a guide, it was estimated that approximately \$250,000 would be necessary to generate noticeable levels of increased SIP law enforcement throughout the State.

Special Programs: LAPD's Drunk Decoy Operations

The Los Angeles Police Department does engage in operations to address sales to intoxicated patrons at licensed establishments. LAPD's "Drunk Decoy" operations are conducted by the department's Vice Unit, and they are supported in part by CABC. Drunk Decoy operations involve an undercover police officer impersonating an intoxicated person seeking to purchase an alcoholic beverage.

Drunk Decoy operations were started in 2003 in response to problems resulting from intoxicated people in the vicinity of alcohol establishments. LAPD hoped to use the operations to generate retailer participation in the responsible vendor program offered by the department.

During an operation, if bar staff sells to the undercover officer, the sale is reported to the bar/store manager who is then offered an opportunity for bar staff and management to undergo training. Establishments that decline the offer are monitored more closely. Citations are not issued for alcohol sales to undercover officers since a true violation of the law did not occur. Actions against the establishment (e.g., fine, license suspension) are not taken for the same reason. Repeat violators of Drunk Decoy operations are not sanctioned in any way.

Although the operations do not result in any enforcement action against alcohol servers, the program is perceived to be effective in changing retail practices and reducing sales to intoxicated patrons. The program has achieved SIP compliance rates as high as 90 percent on some of its operations, which shows significant improvement from pre-program compliance rates of 40 to 50 percent.

Since LAPD began implementing its Drunk Decoy operations, five other jurisdictions in the State have begun conducting similar operations. CABC coordinates with these other local agencies during their Drunk Decoy operations, arranging for agency training for local law enforcement officers on SIP enforcement operations and SIP investigations.

Prosecution of SIP Cases

California's SIP law holds "any person" liable for selling or furnishing an alcoholic beverage to an "obviously intoxicated" person. Violations of the law are punishable as a misdemeanor crime that could result in not more than 6 months in jail, a \$1,000 fine, or both. According to agency guidelines, sales of alcohol to an intoxicated person could also result in a fine, license suspension, and/or license revocation for the holder of the establishment's liquor license. The State and local authorities interviewed for this case study consider California's SIP law adequate, but they noted that criminal cases are rare.

In order to successfully prosecute SIP cases against a licensee, CABC investigators must document multiple indicators of intoxicated behavior in order to meet the "obvious intoxication" standard. They must also establish that the behavior was in view of the server/seller. Physical evidence of the alcohol consumed is not required; an observation of a beer bottle or statements as

to the type of alcohol that was consumed is adequate for prosecution. Per agency guidelines, a diagram of the premises identifying the locations of the patron, undercover officers, and bar staff is desirable. Evidence of the patron's BAC level is admissible, but not required.

When a SIP case is presented for an administrative hearing, CABC attempts to settle the case following the agency's penalty guidelines. If no agreement is reached, the case will be referred to an administrative law judge who will issue a ruling. If it is determined that a violation occurred, the judge will forward a recommended sanction to the CABC director who can approve or modify the proposed sanction. Licensees may appeal the penalty to the ABC Appeals Board and, at the next level, to the District Court of Appeals. If not settled before the hearing, the administrative hearing process lasts approximately six months.

Key Findings

California's SIP law and SIP Enforcement does contain several noteworthy elements:

- The State does not impose a standard on the mental state of the provider of alcohol. That is, a successful prosecution of a SIP case does not require proof that the seller or server *knew* that the patron was intoxicated. Rather, the case must prove that the intoxicated person demonstrated clear signs of intoxication that were evident to the server/seller.
- Through CABC guidelines, the State does appear to attempt to apply stiff sanctions to licensees whose establishments violate the law. Moreover, the State employs a graduated approach to penalties, facilitating the likelihood that repeat violators will be punished severely. The possibility of a 15-day suspension or a significant fine (i.e., 50% of average alcohol beverage sales for a 15-day period) for a first-time violation is not insignificant and a strong incentive for changing retail practices. Moreover, the recommended license suspension for second violations within a 3-year period may be appropriate to deter additional violations.
- SIP law enforcement is generally limited Statewide although there is a perceived need for greater enforcement. LAPD's Drunk Decoy operations, while not true enforcement, represent an attempt to "crack down" on illegal sales of alcohol though clerks and establishments can not be cited for breaking the law.
- Weak enforcement of SIP laws results primarily from lack of sufficient resources to cover the costs of proactive investigations. Agency resources for enforcement are geared primarily to the State's underage drinking laws.

Administrative Penalties for Licensees

Administrative penalties are imposed according to the CABC guidelines that employ a graduated approach to sanctions based on a 36-month period commencing at the time of the first violation.

- 1st violation: 15-day license suspension or a fine equal to 50 percent of the establishment's average daily alcohol beverage sales for 15 days, with a maximum fine of \$3,000 possible.
- 2nd violation: License suspension for a period of time determined by the CABC Director.

Conclusion

The law enforcement authorities consulted for this case study were in agreement that SIP violations in California are a problem that merits greater attention from policymakers and enforcement administrators. Citing law enforcement calls for service and criminal incidents as the documentation of the need for greater enforcement, they recognized that the chief barrier to enforcement was lack of financial resources and, perhaps, lack of understanding about the relationship between alcohol sales to intoxicated people and crime. Given that the State law and CABC's approach to sanctioning licensees are favorable to prosecution, it is unfortunate that greater support for enforcement of SIP laws (financial and otherwise) is lacking.

CASE STUDY: NEW MEXICO

Division of Special Investigations and Division of Alcohol and Gaming

In 1987, the New Mexico Department of Alcoholic Beverage Control was abolished, and the Department of Public Safety's Special Investigations Division was charged with authority over all investigations and enforcement activities required by the Liquor Control Act. A separate State agency, the New Mexico Department of Regulation and Licensing's Alcohol and Gaming Division, is responsible for all licensing of alcohol and gaming establishments, as well as denials, suspensions, and revocations.

There are approximately 5,500 alcoholic beverage licensees in New Mexico. The Special Investigations Division employs 37 enforcement agents, any of which may be called upon to participate in a SIP investigation in addition to other types of special investigations within the agency's mandate.

Licensees who violate the State SIP law are subject to perhaps the most severe penalties for violations in the country; license suspension is a certainty for a first violation. The Alcohol and Gaming Division is responsible for administering penalties and conducts hearings for all licensees and servers who contest citations.

The Problem of Alcohol Sales to Intoxicated People

According to the State-level officials interviewed for this case study, sales of alcoholic beverages to intoxicated people are considered a significant problem in New Mexico by many, including Governor Bill Richardson. Enforcement statistics on DWI arrests, traffic crashes, assaults, sexual assaults, domestic violence, and disturbances were cited as evidence of the problem.

SIP Enforcement

SIP enforcement is a priority in the State because of the Governor's engagement in the problem of alcohol-impaired driving. In light of estimates that up to 50 percent of people driving under the influence of alcohol had their last drinks at licensed establishments, the governor has supported increased SIP enforcement and rule changes that have increased penalties for violations of the State's SIP law. The Governor also requires that all license actions be reported to his office.

Investigations of SIP violations are generally conducted by the Special Investigations Division. During investigations, undercover agents/officers may enter and remain in a licensed alcohol establishment for a period of time in order to observe retail practices. An establishment employee who serves or sells alcohol to an intoxicated person may be cited criminally or administratively by the undercover officer. In addition to issuing the server citation, the undercover officer will also cite the licensee.

New Mexico's statute permits a .14 BAC as presumptive evidence of intoxication, so observation of actual sale or service by a clerk or server is not required by law. Consequently, investigators may cite licensees for violations after registering BAC levels of intoxicated individuals who emerge from establishments.

Although SIP enforcement has achieved “high priority” status within the enforcement agency, additional resources are needed. The Special Investigations Division reported that it has several openings for enforcement staff that, if filled, would allow more staff to be dedicated to SIP investigations. In addition, the increase in enforcement has generated a significant increase in cases before the licensing authority, the Alcohol and Gaming Division. This agency is in need of an additional hearing officer.

Special Programs

The Department of Public Safety’s Special Investigations Division implements two programs aimed at reducing sales to intoxicated people.

Source Investigation Program

Source investigations are conducted to identify the "source" of alcoholic beverages that have been sold or served unlawfully; provided to minors; provided to intoxicated people; provided to people involved in serious incidents and vehicle crashes; or provided to those arrested for DWI. The primary goal of a source investigation is to determine the identity of the seller, server or provider of alcoholic beverage, and to determine whether or not the provider was acting within the law. If the alcoholic beverages have been sold illegally, the Special Investigations Division will prepare and file appropriate criminal and administrative charges against the provider. Source investigations have been an ongoing activity for the Special Investigations Division for many years.

The Source Investigation Program relies considerably on coordination with the State Police and local law enforcement agencies. These other agencies provide information about establishments that sell alcohol to intoxicated people, provide place of last drink data from arrest reports, and serve as back-up assistance for the agents conducting SIP investigations. This coordination was described as working very well.

The Source Investigations Program is perceived to be a successful one. The number of cases being referred has steadily increased due to the overall emphasis on reducing impaired driving within the State. Due to recent increases in penalties, however, almost all cases are now being contested by licensees. (In the past many licensees negotiated settlements with the agency.) This higher volume of SIP cases is placing a greater burden on the Division of Alcohol and Gaming, with hearing officers unable to complete the hearing process as quickly as they would prefer.

Mobile Strike Team

Special Investigations Division’s Mobile Strike Team is a four-person unit dedicated solely to conducting SIP investigations. It was established in 2005 to address problem establishments throughout the State that were known to produce public safety problems. The work of the Mobile Strike Team activities has also contributed to more administrative citations against servers and licensees.

The agency has recognized some challenges in operating the Mobile Strike Team. As a four-person unit, the work keeps officers “on the road” in a big State a great deal, and this has proved challenging for officers’ family lives. Officers assigned to the unit tend to leave the

team when other openings within the Special Investigations Division post. It was felt that this problem could be addressed with the filling of the vacant positions. More staff would allow for the creation of two teams.

Prosecution of SIP Cases

The New Mexico SIP statute law holds “any person” responsible for “selling or serving alcoholic beverages or procuring or aiding in the procurement of alcoholic beverages for an intoxicated person if the person selling, serving, procuring or aiding [...] knows or has reason to know” that the person is intoxicated. Violations are subject to both criminal and civil penalties. Criminal penalties may include a fine of not more than \$1,000, imprisonment for less than one year, or both. Civil penalties may include a fine and license suspension or revocation. Prosecutions against license holders are generally administrative, although in the most heinous breaches of the law criminal charges may sometimes be brought.

The law enforcement official interviewed for this case study believed the wording of the New Mexico SIP statute has posed some difficulties securing convictions; but added that these difficulties could be surmounted. The .14 BAC presumption of intoxication has led to some evidentiary problems. In the field, investigators have at times relied on this element to prove intoxication when the law clearly States that the presumption is a supplement to “other commonly recognized tests of intoxication.” Consequently, the division has recognized the importance of providing better training to investigators on how to write descriptively about intoxication level on reports in the absence of a change in the language of the law. However, it should be noted that one of the officials interviewed for this case study believed that the law should be rewritten to omit the .14 BAC presumption element completely because of the misunderstanding it generates.

Preferred evidence for prosecution was reported to be the following: observation of an intoxicated person; service of alcohol to the intoxicated person; alcoholic content of beverage served; BAC level of intoxicated person, results of additional tests of intoxication, and videotape footage of intoxicated person’s behavior at time of citation. Cases may also be brought for situations in which investigators observe an intoxicated patron within one hour of his/her last drink (e.g., emerging from a licensed establishment). Preferred evidence in such instances would include patron verification of place of last drink and type of alcohol sold, BAC test result of .14 or higher, and videotape footage of the signs of intoxication.

The administrative hearing process has encountered a process-related difficulty stemming from the recent increases in penalties for SIP law violations that include the certainty of license suspension – even for a first violation.

Administrative Penalties for Licensees/Permitees

Administrative penalties for violations follow a graduated approach based on the number of offense within a 12-month period.

- 1st offense: \$1,000 to \$2,000 fine and suspension of all alcohol sales for 1 day.
- 2nd offense: \$2,000 to \$3,000 fine and 7-day license suspension.
- 3rd offense: \$10,000 fine and license revocation.

Administrative Penalties for Sellers/Servers

Administrative penalties for violations follow a graduated approach based on the number of offense within a 12-month period.

- 1st offense: Fine of up to \$500, 30-day suspension of sever certification, or both
- 2nd offense: Fine of up to \$500, 1-year suspension of server certification, or both.
- 3rd offense: Fine, suspension, or revocation of server certification.

These stiffened penalties have caused more license holders to challenge cases, and the administrative hearing process can now last from two to six months from initial citation to final resolution; although some cases have taken as long as a year to process, with the cases eventually dismissed. As mentioned previously, the caseload increase has made the Division of Alcohol and Gaming conclude that funding to support an additional hearing officer is needed in order to process cases in well under six months.

In spite of the growth in challenges to citations, the stiffened penalties are perceived to be a deterrent to future citations for license holders; however, the increased penalties for servers/sellers are not considered an effective deterrent. Servers were described as having a “hard time” refusing service due to patron intimidation of servers/sellers.

Key Findings

The New Mexico case study of SIP enforcement practices does offer several important findings.

- The political will of the most senior elected official in the State, Governor Bill Richardson, has been crucial to SIP enforcement. The governor’s commitment to combating the alarming number of alcohol-related traffic crashes and fatalities in the State has generated unprecedented support and accountability for SIP investigation work, with the Division of Alcohol and Gaming (the licensing authority) reporting all license actions to the Governor’s office.
- High-level support for enforcement has led to not only increases in SIP investigations but the creation of a special unit, the Mobile Strike Team, which works to address SIP violations at known problem establishments throughout the State. The Mobile Strike Team regularly collaborates with other law enforcement agencies (i.e., State Police, local police departments).
- Increases in SIP enforcement activity will have a negative effect on enforcement programs if there is not an adequate number of officers available to conduct enforcement. In New Mexico, financial support for enforcement is present, but the enforcement agency is understaffed due to position vacancies. The Mobile Strike Team that travels the State has experienced high staff turnover due to the demands on investigators’ personal lives.
- The State’s SIP statute has presented some challenges for law enforcement that indicate that better law enforcement training is needed regarding evidentiary requirements of the new law.
- The State statute’s .14 BAC presumption may be viewed a useful tool for SIP enforcement in that it does not require that officers observe the actual sale of alcohol to an intoxicated person. SIP enforcement investigations are costly in that they usually involve a minimum of two undercover officers remaining in an establishment long enough to witness an illegal sale. The .14 BAC presumption relieves an agency from incurring the kinds of expenses typically associated with undercover investigations.

- Increases in penalties coupled with increased enforcement are likely to produce more challenges to citations. The administrative adjudication process will experience process-related difficulties as a result of these challenges if it is not adequately staffed to meet greater demand for hearings.

Conclusion

New Mexico provides an excellent example of SIP law enforcement in practice. Enforcement results from recognition of and willingness to address a serious alcohol-related problem: traffic crashes and fatalities. Enforcement receives support from the highest level of State government, the Office of the Governor, and this support includes financial support. Moreover, SIP enforcement activity centers on a model in which collaboration with other enforcement agencies is integral. The adjudication process has experienced some challenges, but in light of the accountability the licensing authority must demonstrate to the Governor's Office, it is likely that these challenges will be addressed and sanctions for SIP law violations will be imposed. It does not appear that the high level of SIP enforcement activity will diminish anytime in the near future.

DISCUSSION AND BEST PRACTICE RECOMMENDATIONS

Five general findings stand out from this research:

- 1) Although SIP laws are commonly assumed to be similar across jurisdictions, in fact they vary widely on several key variables, in many cases substantially weakening their applicability. As discussed above and below, statutory provisions may establish strict evidentiary requirements, their applicability to types of alcohol servers may be restricted, prohibited acts covered may be restricted, and penalty provisions may be unstructured. These variations can make prosecution more difficult and can discourage SIP enforcement.
- 2) The laws are poorly drafted. In particular, most state provisions fail to distinguish between criminal and administrative proceedings and create uncertainty regarding evidentiary requirements and penalties that will be imposed.
- 3) There are multiple factors that contribute to the lack of SIP enforcement, including cultural norms undermining support for the law and lack of resources. Law enforcement officials also reported that the legal variables identified in paragraph #1 above may also contribute to the lack of enforcement attention.
- 4) Some State enforcement officials noted that the current national emphasis on underage drinking has resulted in directing a large percentage of the limited resources for alcohol law enforcement toward operations focused on underage drinking. This has resulted in fewer resources for other alcohol law enforcement priorities, including SIP enforcement.
- 5) Best practices exist in various States both in terms of legislative drafting and administration/enforcement.

Addressing Variation and Uncertainty Within Legal Statutes

Almost every State and the District of Columbia (except Florida, Nevada, and Wyoming) have SIP laws that apply broadly to most alcohol retail licensees, and most, but not all States apply their laws through both administrative and criminal proceedings. Although various terms are used, States generally agree either explicitly in the law or through court interpretation that violations can only occur if the intoxication of the person being served was obvious or visible.

- **Defendants**

Nearly one-third of the States do not apply their SIP laws to noncommercial servers, either by not having criminal provisions or by limiting their applicability to licensees and their staff. Although there are sound policy reasons to treat these two groups differently (discussed below), there does not appear to be justification to exempt noncommercial servers from the law.

The standard appropriately applies to all servers of alcohol. Including both in the SIP provisions reinforces the social norm that third parties have a shared responsibility to stop service of alcoholic beverages to intoxicated people, whose intoxication impairs judgment and in-

creases the risk of impaired driving as well as other types of alcohol-related injuries and violence.

Legal Best Practice #1

SIP laws should be enacted in all States and they should apply to all servers and sellers, whether in commercial or noncommercial settings.

- **Intoxication definition**

As noted above, States use various terms in their laws for obvious or visible intoxication. In most cases, the terms are not defined in the SIP statutes and regulations, creating potential uncertainty regarding their application and constitutionality. Case law research suggests that the courts have consistently addressed these potential problems by applying their own definitions that include the “obvious” or “visible” component of the prohibition. With these court interpretations, the variations across States do not appear to be significant. Nebraska’s law provides a non-inclusive list of signs of visible intoxication, offering additional guidance to licensees, servers, and law enforcement officials. Providing non-inclusive lists of what constitutes visible intoxication provides important guidance to law enforcement regarding what evidence is required in order to establish a violation of the law.

Legal Best Practice #2

The definition of obvious or visible intoxication found in State SIP laws should include a non-inclusive list of signs of intoxication that can be used as evidence.

- **Prohibited activities**

An unexpected finding is the variation in the acts that are prohibited. The primary offense is to sell, serve, or give alcohol to an obviously intoxicated person. Some State laws do not explicitly include actions other than selling, creating some uncertainty whether a non-sale transfer is included.

At least 16 States also prohibit commercial servers from allowing intoxicated people to consume alcohol on the premises without reference to the original service. If a server sees an intoxicated person consuming, he/she is required to remove the drink and ensure that the consumption ceases. Some include in their law a provision that allows an intoxicated person to remain or loiter on the premises. Note that these provisions do not apply to noncommercial servers.

Previous research has not identified this critical additional prohibition in some SIP laws, and their potential impact on service to intoxicated people and impaired driving has not been studied. They appear justified as part of a commercial server’s responsibility to maintain a safe premises and methods for doing so are routinely included in RBS training programs. On the other hand, prohibiting servers from allowing intoxicated people to remain on the prem-

ises may have unintended consequences and violates basic premises of RBS training. The primary goal should be to ensure that no harm occurs, either by providing safe transportation or seeking law enforcement assistance. Allowing the person to stay on the premises will reduce the effects of intoxication while an appropriate intervention is devised.

Legal Best Practice #3

State SIP laws should explicitly include “gifts” and other non-sale exchanges and should require servers to remove any alcohol being consumed by an obviously intoxicated person. Laws prohibiting servers from allowing intoxicated people to remain or loiter on commercial premises should be reviewed to determine whether they may inadvertently create unnecessary risks for public health and safety.

- **Evidentiary requirements**

As discussed in the findings section, evidentiary requirements typically differ between administrative and criminal proceedings, reflecting the distinct purposes and functions of the two legal forums. In the case of alcoholic beverage control generally and SIP laws specifically, the purpose of administrative rules and regulations is to insure safe and responsible business practices on the part of retail alcohol licensees. In receiving their licenses, retailers are granted a privilege to conduct business and are expected to take proactive steps to protect the public. It is therefore reasonable for the State to enforce sanctions against the license when such steps are not taken, with repeated violations potentially leading to revocation of the retailer’s privilege of doing business. Administrative proceedings also have the advantage of being relatively streamlined, with determinations made more swiftly than criminal proceedings.

Evidentiary requirements for establishing a violation of the SIP laws should reflect this fundamental purpose of protecting public safety. Thus, for SIP laws, credible evidence that visibly intoxicated people are being served or are allowed to consume at a licensed premise should be sufficient to support a violation by a fact finder.

Criminal law also has as its purpose the protection of the public from harm. However, it does so through determining individual guilt, and sanctions are imposed on the individual offender that can result in loss of personal freedom. For these reasons, evidentiary requirements are more demanding both in terms of what constitutes individual wrong-doing and the burden of proof for the prosecution. For SIP laws, evidence of server malfeasance or at least negligence is therefore typically required for a criminal violation.

Evidentiary requirements in SIP laws in general ignore this critical distinction. Many States require proof of actual knowledge by the server that the patron is visibly intoxicated in both criminal and administrative proceedings, a high standard that deters enforcement of the law in an administrative context. Most State laws are simply silent on the issue, leaving it ultimately to the State courts to make the final determination, creating uncertainty for law enforcement and administrative officials.

Many courts have held that indirect evidence of the illegal service is sufficient to support a violation in administrative proceedings. New Mexico's SIP regulation is unique in establishing a rebuttal presumption that a patron with a .14 BAC within an hour of the service is visibly intoxicated, thus allowing indirect evidence to support an administrative violation and shifting the burden of proof to the licensee to present evidence that visible signs of intoxication were not present. This approach comports with the underlying purposes of the law and increases the likelihood that licensees will perceive that violations will lead to relatively swift, certain punishment.

Legal Best Practice #4

State SIP laws should establish explicit evidentiary requirements that differentiate between administrative and criminal proceedings. For administrative proceedings, the law should explicitly state that indirect evidence of illegal service is sufficient to support a violation, and a rebuttal presumption that a patron with a .14 or higher BAC within an hour of the service should be established. Criminal proceedings should be held to stricter evidentiary standards.

- **Penalties**

SIP laws generally do not address potential penalties for violations, relying instead on general provisions that apply to a wide variety of crimes and administrative violations. The lack of specificity gives administrative agencies, prosecutors, and judges wide discretion in determining the appropriate punishment. In practice, many administrative agencies have established penalty guidelines, either by regulation or through internal procedures. This shortcoming in the SIP laws is in part the result of the lack of enforcement. With more violations being detected, administrative agencies would likely be more attentive to establishing clear penalty guidelines. Nevertheless, the uncertainty regarding penalties undermines the effectiveness of SIP laws.

As detailed in the Findings section, at least 11 States have formal, graduated or tiered administrative penalty structures, imposing harsher penalties for repeat violations, with the first violation usually involving a small fine and license revocation imposed on the third or fourth offense. This approach is recommended as a means to encourage licensee compliance and adoption of RBS standards. The focus should be on repeat offenders who are of greatest risk to public safety. Violations by licensees and their staff should be anticipated, and as long as corrective action is taken and chronic violations are not occurring, harsher penalties are not warranted.

Most States do not impose minimum penalties thereby lessening the perceived certainty that a punishment will be imposed. New Mexico is a notable exception and can serve as a model for other States.

At least 6 States use a similar, tiered approach for criminal penalties. Some States treat SIP violations as petty offenses if there are no aggravating circumstances, which can streamline the process and increase the likelihood that a penalty will be imposed.

When establishing a penalty schedule, attention should be placed on the time period for defining repeat offenders, with longer time periods recommended to provide sufficient time for enforcement agencies to conduct repeat enforcement operations, which are relatively expensive and complex.

SIP laws have the potential to encourage the adoption of RBS practices, by rewarding licensees that abide by them and imposing harsher penalties on those who do not. This can be done through the use of mitigating and aggravating factors in determining penalties. SIP laws will be more effective if RBS training is mandated, as is the case in 14 States. A comprehensive RBS law mandates training in appropriate service practices to prevent patron intoxication and to identify those who do become intoxicated. Successful participants receive server permits, which are required to work in a licensed establishment. In States with mandatory RBS programs, SIP laws should develop similar tiered penalty guidelines for servers that lead to revocation of the server permit for repeat offenses.

Legal Best Practice #5

In accordance with deterrence theory, penalty guidelines in SIP laws should be specific and certain. A tiered approach should be used for both administrative and criminal offenses: first offenses should have relatively light penalties and repeat offenders should anticipate a harsh penalty – for retail licensees, the potential loss of their license to do business. Time periods for determining repeat offenses should be at least five years. RBS training should be required as a sanction for violating the law. Minimum penalties should be mandated at each tier of the penalty schedule. A similar approach should be used for servers in States with mandated RBS training.

Addressing the Challenge of Sufficient Resources for Enforcement

With the current emphasis on underage drinking enforcement nationally, many alcohol control agencies are strapped for resources to attend to other types of alcohol enforcement. In many States, the ABC is also responsible for such things as tobacco and gaming enforcement among other specialized types of enforcement. Quite simply there is insufficient staff available to conduct SIP investigations. In light of this reality, it is clear that increasing SIP enforcement levels will require changes not only within the law enforcement field but among others as well.

- **Interagency collaboration**

The responsibility for alcohol law enforcement varies across States. A few States rely solely on the State ABC department, other States parse out enforcement efforts among local agencies, and still others coordinate efforts between both local and State agencies. Drawing from

the underage drinking enforcement model that exists in many States, a coordinated effort appears to provide the most comprehensive and organized structure for SIP enforcement. One helpful resource at the State level include NHTSA Law Enforcement Liaisons who work to improve communication between State and local law enforcement agencies in an effort to address the problem of impaired driving.

Partnerships across enforcement agencies are important in several respects. Alcohol-related public safety problems are documented across several agencies, and communication among agencies will enable better understanding of the local problem. Educating policymakers and other decision-makers about the importance of SIP enforcement will be more effective if conducted by law enforcement professionals from more than one agency. Last, SIP enforcement is an important yet time consuming investment in improving public safety, and SIP enforcement is more feasible when the resource burden is shared across agencies.

Enforcement Best Practice #1

Enforcement agencies at State and local levels with responsibility for regulating alcohol licensees and enforcing SIP laws should establish communication and collaboration on SIP enforcement.

- **Data collection and analysis**

Adequate resource allocation to support SIP enforcement stems from documented evidence that SIP law violations result in significant public safety problems and demands on law enforcement agencies. These problems and demands include alcohol-related traffic crashes, officer time addressing impaired driving violations, and calls for service to address other crime and nuisance problems. Tracking the relationship between overservice of alcohol at licensed establishments and these public safety problems will result in objective data to support increases in the resources allocation to address SIP law violations.

For some law enforcement agencies, data collection and analysis may require nothing more than tracking and perhaps mapping data that is already collected on law enforcement arrest reports (e.g., DUI arrest reports) or tracked through other law enforcement documents such as call for service logs. For other agencies, this will require modifying data collection tools to generate information about possible overservice. At minimum, law enforcement data collection instruments should solicit information about an arrestee's place of last drink prior to DUI arrest, an alcohol-related traffic crash, or other criminal consequence of alcohol consumption.

Enforcement Best Practice #2

Agencies should collect and analyze enforcement data stemming from overservice of alcohol.

- **Forging alliances with health agencies and advocacy groups**

As documented in the findings section, SIP law enforcement is hampered in most States by the lack of political will and adequate resources. It is not a priority among policymakers. New Mexico offers an interesting exception to this general finding. The Governor has made SIP law enforcement a high priority, resulting in more intensive enforcement efforts.

Building political will and resources requires developing alliances with groups across a broad spectrum. Law enforcement agencies can partner with State and local health agencies and citizen's groups that have as part of their focus preventing impaired driving and other alcohol problems, and promoting community health and safety. These groups can assist in educating decision-makers and the general public about the harms posed by alcohol sales to intoxicated people. Advocacy groups can also play an important role in educating the general public about the importance of SIP enforcement. Data collection that documents the role of SIP violations in community alcohol problems can be useful in this educational effort.

Enforcement Best Practice #3

Law enforcement agencies should establish partnerships or build upon existing partnerships with local community groups and health agencies that are concerned with impaired driving and other alcohol-related public safety and public health problems. Such partnerships can help build political support among policymakers for giving SIP law enforcement a higher priority and providing needed resources for enforcement programs.

- **Data-driven arguments for SIP enforcement**

Resource allocation in law enforcement is driven by statistics. The current emphasis on underage drinking was generated by greater attention being paid to objective measures on alcohol consumption by youth and the problems associated with this consumption. Policy change on SIP enforcement, increased funding for SIP enforcement, and reallocation of resources within agencies will all begin with educating policymakers and key decisions-makers. And while community groups may stress the value of enforcement to such things as reductions in injuries and fatalities and improvements in quality of life, law enforcement agencies are in the best position to provide objective measures on the local costs and consequences of alcohol sales to intoxicated people. The economic costs of SIP violations, and the potential cost savings of a vigorous education and enforcement program, should be included in this effort.

Enforcement Best Practice #4

Agencies should offer data-driven arguments to convince policymakers and decision-makers about the need for and value of SIP enforcement.

- **Specialized training in SIP enforcement**

SIP enforcement is not widely conducted and in order for any increase in enforcement activity to be effective, enforcement officers must receive specialized SIP enforcement training. Such training must center on the State’s evidentiary standards for conviction, but also address practical aspects of enforcement operations. Training should address: (1) using data to identify problem establishments; (2) conducting proactive and reactive investigations; (3) interacting with licensees, managers, intoxicated patrons, and other patrons; (4) collecting evidence; (5) making use of new technology; (6) issuing citations; (7) writing a comprehensive report; and (8) preparing for the adjudication process. The National Center for Alcohol Law Enforcement is one organization that provides this comprehensive training.

Enforcement Best Practice #5

Agencies should provide specialized SIP enforcement training for officers. Training should be State-specific to address the burden of proof required to establish each element of the State SIP law.

- **Making better use of technology**

Videotapes of intoxicated patrons at time of arrest help to meet evidentiary standards that require the prosecution to demonstrate that servers/sellers “should have known” or “had reason to believe” that a patron was intoxicated or that a “reasonable person” would have detected intoxication. Portable breathalyzers can be of utility in States where statutes do not require that officers observe actual sales of alcohol to an intoxicated person.

Enforcement Best Practice #6

Agencies should invest in greater use of technology, including training for law enforcement in the proper use of such technologies to assist in enforcement and prosecution. Videotapes and portable breath test results can produce powerful evidence to supplement dispassionate agent testimony about speech, motor movements, and odor if captured in accordance with National and State protocols.

- **Additional funding for SIP enforcement**

It can be argued that national attention to underage drinking stems from supplemental funding for enforcement through the Enforcing Underage Drinking Laws program block grant to States. This program requires reporting on enforcement to the funding agency, the U.S. Department of Justice. At a State level, concern about alcohol-related crashes and fatalities in New Mexico spurred the Governor’s decision to increase funding for SIP enforcement and require reporting on State enforcement efforts to his office. It is not likely that standard SIP enforcement practices will be increased in the absence of increased funding and political support for such enforcement.

Enforcement Best Practice #7

Dedicated funding for SIP enforcement should be made available to State and local law enforcement agencies with funding sources requiring that enforcement agencies report back to them on the results of SIP enforcement activity. Dedicated funding and accountability have been demonstrated to be key elements in active and successful SIP enforcement programs.

- **Alternatives to traditional SIP enforcement**

In light of limited resources to conduct undercover SIP enforcement investigations, alternative approaches for addressing suspected SIP violations are possible. Drunk-Decoy-type operations involve undercover officers posing as drunk patrons seeking to purchase alcohol. Although these operations require less time to conduct than traditional SIP investigations, they do require two-agent teams for officer safety reasons. Dedicated police units such as New Mexico's Mobile Strike Team invest resources in maintaining a small staff of State-level law enforcement investigators who have received specialized training in SIP enforcement. These investigators travel throughout the State and collaborate with local police departments to conduct undercover SIP operations at known problem establishments.

Enforcement Best Practice #8

Agencies should explore other approaches to address SIP law violations. While Drunk-Decoy-type operations do not result in citations for sellers or servers who provide alcohol, they do serve to communicate to retailers that law enforcement is attentive and monitoring their serving practices, and they can justify the need for establishments to participate in RBS training. Dedicated enforcement units ensure that that law enforcement officers with the proper training can be deployed to address know problem establishments, and, if inter-agency collaboration is incorporated into their work, dedicated unit staff may serve to train other law enforcement personnel in SIP enforcement strategies and techniques.

CONCLUSION

With over 85,000 people dying each year from alcohol-related causes in the United States, the cost of alcohol-related harm to society is enormous, both in human and economic terms.⁵⁰ Drinking and driving is a significant cause of the thousands of alcohol-related injuries and fatalities that occur each year, with 13,470 people killed in alcohol-impaired driving crashes in 2006 alone.⁵¹ More interventions are needed to address the problem of drinking drivers. Alcohol service and sales practices can be linked to the increased risk of impaired driving and alcohol-related violence and injury, and this strongly suggests that interventions designed to improve serving practices and the enforcement of laws governing these practices will produce a decrease in alcohol-related harm.⁵²

Laws Prohibiting Alcohol Sales to Intoxicated Persons is an important contribution to the research literature on strategies for reducing alcohol impaired driving and other alcohol-related public health and safety problems through enforcement of SIP laws. As detailed in this report, research on retail compliance with and enforcement of SIP laws is limited, and what little research exists suggests that more active enforcement of SIP laws has tremendous potential for reducing alcohol-related problems since intoxication can be controlled at the level of the licensed establishment.

The legal research findings in this report provide the first ever comprehensive and substantive analysis of State SIP laws. They also draw attention to key statutory elements that help or hinder enforcement and adjudication efforts, and examine the impact of case law findings on general understanding of SIP law. These findings generated several best practice recommendations that would be of considerable utility to any effort to curb SIP law violations. Qualitative research findings on enforcement and adjudication practices provide additional insight into what would be necessary for and helpful to effective enforcement practices and successful prosecution of SIP law violations.

The report is designed for policymakers, administrators, researchers, law enforcement professionals, health and safety advocacy groups, and others who are working to reduce injuries and fatalities stemming from alcohol impaired driving. The findings and best practice recommendations provide a foundation for augmenting their efforts to prevent these tragedies on the Nation's highways with the effective application of State SIP laws.

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¹⁵ *Liquor Control Law Reporter*. Chicago, IL: CCH Incorporated (updated monthly).

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¹⁷ Some States treat SIPs as “petty offenses” or impose “civil” fines for violations, which may be similar to minor infractions such as parking tickets. For non-licensee defendants, the violation may initially be heard by an administrative hearing officer in a quasi-criminal proceeding, although appeals typically involve court appearances.

¹⁸ Alaska, Delaware, Indiana, Louisiana, Michigan, New Mexico, Oregon, Rhode Island, Tennessee, Utah, Vermont, Washington, and Wisconsin. New Hampshire and New Jersey require RBS training for managers but not servers. Nevada has mandatory training but does not have a SIP law. Alcohol Policy Information System, Beverage Service Training. National Institute on Alcohol Abuse and Alcoholism Web site: www.apis.niaaa.nih.gov. Current as of January 1, 2007.

¹⁹ See, e.g., *Down Under, Ltd. v. Delaware Alcoholic Beverage Control Com'n*, 576 A.2d 675 (1989) (administrative proceedings have lesser evidentiary standard even when proceeding brought for violation of a criminal statute).

²⁰ Las Vegas Municipal Code (Nev.) § 6.50.450. Accessible online at: <http://ordlink.com/codes/lasvegas/index.htm>.

²¹ Some States also prohibit sales to “habitual drunkards.” This term has potential Constitutional problems, and State enforcement and administrative agencies generally ignore its inclusion. It is therefore not included in this analysis.

²² Virginia Code Ann. § 4.1-100.

²³ Alaska Stat. Ann. § 04.21.080.

²⁴ Neb. Admin. R. & Regs. Tit. 237, Ch. 6, § 019.

²⁵ See, e.g., *Thompson v. Bryson*, 19 Ariz.App. 134, 505 P.2d 572 (1973); *State v. Mata*, 71 Haw. 319, 789 P.2d 1122 (1990).

²⁶ See, e.g., *Seeley v. Sobczak*, 281 N.W.2d 368 (1979); *In re Tweer*, 146 Vt. 36, 498 A.2d 499 (1985).

²⁷ See, e.g., *Bailey v. Black*, 183 W.Va. 74, 394 S.E.2d 58 (1990).

²⁸ See, e.g., *Krupp Oil Company, Inc. v. Mack Yeargan, et al.*, 665 So.2d 920 (1995).

²⁹ *Sanders v. Officers Club of Connecticut, Inc.* 196 Conn. 341, 493 A.2d 184 (1985).

³⁰ For citations, see Appendix B.

³¹ No case law or administrative ruling was located to address this issue.

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³⁶ See, e.g., *Kavorkian v. Tommy’s Elbow Room, Inc.*, 694 P.2d 160 (1985) (court separated issue of whether a patron was exhibiting signs of intoxication from whether seller used his powers of observation to fulfill his affirmative duty to determine whether the patron was intoxicated).

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³⁹ *Studebaker’s of Savannah, Inc. v. Tibbs*, 195 Ga.App. 142, 392 S.E.2d 908 (1990).

⁴⁰ *Vickowski v. Polish American Citizens Club of Town of Deerfield, Inc.*, 422 Mass. 606, 664 N.E.2d 429 (1996).

⁴¹ *Life's a Beach Club, Inc. v. Liquor Control Adjudication Board*, 100 Hawai'i 33 (2002).

⁴² *In re Tweer*, 146 Vt. 36, 38, 498 A.2d 499, 500-01 (1985).

⁴³ *Powers Package Store, Inc. v. Natick Bd. of Selectman*, 15 Mass.L.Rptr. 319 (2002).

⁴⁴ *Pate v. Alian*, 49 P.3d 85 (Okla., 2002); *In re Tweer*, supra.

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⁴⁶ See, e.g., *A.C. Cruise Line, Inc. v. Alcoholic Beverages Control Com'n*, 29 Mass. App. Ct. 319, 560 N.E.2d 145 (1990) (in State without "loitering" provision, licensee does not have duty to assure that an intoxicated person does not consume or possess alcohol).

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APPENDIX A: Overview of SIP Statutes and Regulations*

State	Who may be liable: Criminal			Who may be liable: Administrative		Prohibited acts Consume or remain on premises	Evidentiary requirements		
	Any person	Licensee	Employee	Licensee	Employee		Knowledge	Criminal negligence	Negligence
AL		√	√	√					
AK		√	√	√	√	√		√	
AZ	√	√	√	√		√			FN 1
AR	√	√	√	√					
CA	√	√	√	√					
CO	√	√	√	√		√			
CT		√	√	√					
DE		√	√	√	√				
DC	√	√	√	√		√			
FL	No statute or regulation								
GA	√	√	√	√			FN 2		
HI		√	√	√		√			
ID	√	√	√	√		√			
IL		√	√	√					
IN	√	√	√	√	√		√		
IA	√	√	√	√					
KS	√	√	√	√		√	√		
KY		√	√	√					
LA		√	√	√	√				
ME	√	√	√	√		√			
MD		√	√	√					
MA		√	√	√					
MI		√	FN 3	√	√				
MN	√	√	√	√					
MS	√	√	√	√					
MO	√	√	√	√					
MT	√	√	√	√					
NE		√	√	√		√			
NV	No statute or regulation								
NH	√	√	√	√					
NJ		√	√	√		√			
NM	√	√	√	√	√				√
NY	√	√	√	√		√			
NC		√	√	√		√	√		
ND	√	√	√	√			√		
OH		√	√	√					
OK	√	√	√	√			√		
OR	√	√	√	√	√	√	√		
PA	√	√	√	√					
RI				√	√				
SC		√	√	√			√		
SD		√		√					
TN	√	√	√	√	√				
TX	√	FN 4	√	FN 4				√	
UT	√	√	√	√	√				√
VT				√	√	√			
VA	√	√	√	√		√			√
WA	√	√	√	√	√	√			
WV		√	√	√					
WI	√	√	√	√	√				
WY		FN 5		FN 5					

Footnote 1: The negligence standard in Arizona appears to apply only to that part of the statute involving an intoxicated person remaining on the premises.

Footnote 2: The Georgia State agency can impose administrative penalties only for "willful" violation of the SIP law. Local agencies have concurrent jurisdiction and can impose penalties without regard to whether the violation was willful.

Footnote 3: Michigan law prohibits a "vendor" from selling to an intoxicated person. It is unclear whether the term "vendor" includes servers.

Footnote 4: No vicarious liability for employee where employer meets requirements RBS training V. T. C. A., Alcoholic Beverage Code § 106.14

Footnote 5: Licensees with drive-in areas adjacent or contiguous to the licensed room only.

APPENDIX B: State SIP Statutes

ALABAMA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Ala. Admin. Code r. 20-X-6-.02	ABC Board on-premises licensee, employee, or agent thereof.	Serving any person alcoholic beverages if such person appears, considering the totality of the circumstances, to be intoxicated.		
Ala. Admin. Code r. 20-X-6-.14	ABC Board off-premises licensee, employee, or agent there of.	Selling, furnishing or giving any alcoholic beverage to any person if such person appears, under the totality of the circumstances, to be intoxicated.		

APPENDIX B: State SIP Statutes

ALASKA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
AS 04.16.030	A licensee, an agent, or employee.	<p>(a) Selling, giving, or bartering alcoholic beverages</p> <p>(b) Allowing another person to sell, give, or barter an alcoholic beverage</p> <p>(c) Allowing a drunken person to enter and remain within licensed premises or to consume an alcoholic beverage within licensed premises</p> <p>(d) Permitting a drunken person to sell or serve alcoholic beverages.</p>	<p>(8) "Drunken person" means a person whose physical or mental conduct is substantially impaired as a result of the introduction of an alcoholic beverage into the person's body and who exhibits those plain and easily observed or discovered outward manifestations of behavior commonly known to be produced by the overconsumption of alcoholic beverages; AK ST § 04.21.080</p>	<p>With criminal negligence:</p> <p>(1) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation; AS 04.21.080</p>
	A person receiving compensation for transporting alcoholic beverages.	Delivering alcoholic beverages to a drunken person.		<p>Knowingly:</p> <p>(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the person's conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had the person not been intoxicated acts knowingly with respect to that conduct or circumstance; AS 04.21.080</p>

APPENDIX B: State SIP Statutes

ARIZONA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
A.R.S. § 4-244 (14)	A licensee or other person.	Selling or furnishing spirituous liquor to an obviously intoxicated person, or allowing or permitting an obviously intoxicated person to remain on the premises, except that a licensee or an employee of the licensee may allow an obviously intoxicated person to remain on the premises for a period of time not to exceed thirty minutes after the state of obvious intoxication is known or should be known to the licensee in order that a nonintoxicated person may transport the obviously intoxicated person from the premises.	“Obviously intoxicated” means inebriated to the extent that a person’s physical faculties are substantially impaired and the impairment is shown by significantly uncoordinated physical action or significant uncoordinated physical action or significant physical dysfunction that would have been obvious to a reasonable person. A.R.S. § 4-244 (14)	Knew or should have known (apparently applicable only to provision regarding an obviously intoxicated person remaining on the premises).

APPENDIX B: State SIP Statutes

ARKASAS				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
A.C.A. § 3-3-209	Any person.	Selling, giving away, or disposing of intoxicating liquor to an intoxicated person.		
AR ADC 006 02 001	The holder of a permit to sell or dispense controlled beverages at retail.	Selling to an intoxicated person.		

APPENDIX B: State SIP Statutes

CALIFORNIA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
West's Ann.Cal.Bus. & Prof.Code § 25602	Any person.	Selling, furnishing, giving, or causing to be sold, furnished, or given away, any alcoholic beverage to any obviously intoxicated person.		

APPENDIX B: State SIP Statutes

COLORADO				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
C.R.S.A. § 12-47-301	The licensee during a tasting.	“Tastings” service to visibly intoxicated.		
C.R.S.A. § 12-47-901	<p>“Any person” C.R.S.A. § 12-47-901(1)(a)</p> <p>“any person licensed to sell at retail” C.R.S.A. § 12-47-901(5)(a)(I)</p>	Selling, serving, giving away, disposing of, exchanging, or delivering or permitting the sale, serving, giving, or procuring of, any alcohol beverage to a visibly intoxicated person.		
1 CO ADC 203-2 Regulation 47-900	Licensee or employee of the licensee.	Permitting the serving or loitering of a visibly intoxicated patron.		

APPENDIX B: State SIP Statutes

CONNECTICUT				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
C.G.S.A. § 30-86	Any permittee or any servant or agent of a permittee.	Selling or delivering alcoholic liquor to any minor or any intoxicated person, or to any habitual drunkard, knowing the person to be such a habitual drunkard.		
CT ADC § 30-6-B21a	Package stores and charitable organizations.	During “tastings” serving an alcoholic beverage or allowing an alcohol beverage to be consumed by an intoxicated person.		

APPENDIX B: State SIP Statutes

DELAWARE				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
4 Del.C. § 706	Any licensee, or employee of a licensee, or person in charge of a licensed premise.	Selling or serving alcoholic liquors to any individual if such individual is intoxicated or appears to be intoxicated.		

APPENDIX B: State SIP Statutes

DISTRICT OF COLUMBIA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
DC ST § 25-781	(no mention)	The sale or delivery of alcoholic beverages to any person who appears to be intoxicated.		
DC ST § 25-781	A retail licensee.	Permitting at the licensed establishment the consumption of an alcoholic beverage by an intoxicated person, or any person who appears to be intoxicated.		

APPENDIX B: State SIP Statutes

FLORIDA

No SIP laws or regulations.

APPENDIX B: State SIP Statutes

GEORGIA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Ga. Code Ann., § 3-3-22	N/A	No alcoholic beverage shall be sold, bartered, exchanged, given, provided, or furnished to any person in a state of noticeable intoxication.		

APPENDIX B: State SIP Statutes

HAWAII				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
HI ST § 281-78	Any licensee or employee of the licensee.	Selling, serving, or furnishing any liquor to, or allowing the consumption of any liquor by any person at the time under the influence of liquor.	<p>“Under the influence of liquor’ means that the person concerned has consumed intoxicating liquor sufficient to impair at the particular time under inquiry the person’s normal mental faculties or ability to care for oneself and guard against casualty, or sufficient to substantially impair at the time under inquiry that clearness of intellect and control of oneself which the person would otherwise normally possess.”</p> <p>HI ST § 281-1</p> <p>See also: <i>State v. Mata</i></p>	

APPENDIX B: State SIP Statutes

IDAHO				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
I.C. § 23-312	An officer, agent, or employee of the dispensary.	Selling any alcoholic liquor to any person intoxicated or apparently intoxicated.		
I.C. § 23-605	Any person.	Selling, giving, or dispensing any alcohol beverage, including any distilled spirits, beer or wine, to another person who is intoxicated or apparently intoxicated shall be guilty of a misdemeanor.		
I.C. § 23-615	No person licensed pursuant to title 23, Idaho Code, or his or its employed agents, servants, or bartenders.	Selling, delivering or giving away, or causing or permitting to be sold, delivered, or given away, or allowed to be consumed, any alcohol beverage, including any distilled spirits, beer or wine, to any person actually, apparently or obviously intoxicated.		

APPENDIX B: State SIP Statutes

ILLINOIS				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
235 ILCS 5/6-16	A licensee, any officer, associate, member, representative, agent, or employee of such licensee.	Selling, giving, or delivering alcoholic liquor to any intoxicated person, except as provided in Section 6-16.1.		

APPENDIX B: State SIP Statutes

INDIANA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
IC 7.1-5-10-15	"A person."	Selling, bartering, delivering, or giving away an alcoholic beverage to another person who is in a state of intoxication if the person knows that the other person is intoxicated.		Knowledge required

APPENDIX B: State SIP Statutes

IOWA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
I.C.A. § 123.49	“A person.”	Selling, dispensing, or giving to an intoxicated person, or one simulating intoxication, any alcoholic liquor, wine, or beer to an intoxicated person.		

APPENDIX B: State SIP Statutes

KANSAS				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
K.S.A. § 41-2708	Person holding a license.	Permitting any intoxicated person to remain in or upon the licensee's place of business.		
KS ADC 14-13-13	Retailer.	Allowing an intoxicated person to frequent, loiter, or be employed upon the licensed premises.		
KS ST § 41-715	"A person."	Knowingly selling, giving away, disposing of, exchanging or delivering, or permitting the sale, gift or procuring of any alcoholic liquor to or for any person who is an incapacitated person, or any person who is physically or mentally incapacitated by the consumption of such liquor.		Knowledge required

APPENDIX B: State SIP Statutes

KENTUCKY				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
KRS § 244.080	<p>“A retail licensee”</p> <p>Includes employees of retail licensee.</p> <p><i>Commonwealth v. White</i>, Ky., 3 S.W.3d 353 (1999)</p>	<p>Selling, giving away, or delivering any alcoholic beverages, or procuring or permitting any alcoholic beverages to be sold, given away, or delivered to a person actually or apparently under the influence of alcoholic beverages.</p>		

APPENDIX B: State SIP Statutes

LOUISIANA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
LSA-R.S. 26:90	Holder of a retail dealer's permit and the agent, associate, employee, representative, or servant of any such person.	Selling or serving or permitting the sale or service of alcoholic beverages to any intoxicated person.		
LSA-R.S. 26:286	Holder of a retail dealer's permit and the agent, associate, employee, representative, or servant of any such person.	Selling or serving or permitting the sale or service of beverages of low alcoholic content to any intoxicated person.		

APPENDIX B: State SIP Statutes

MAINE				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
M.R.S. 28-A, §2081	A person.	Procure, or in any way aid or assist in procuring, furnish, give, sell, or deliver liquor to a visibly intoxicated person.		
Code Me. R. 16-226 Ch. 2, § 1	Licensee for on premise consumption.	Permitting the consumption of liquor on licensed premises by persons visibly intoxicated.		

APPENDIX B: State SIP Statutes

MARYLAND				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
MD Code, Art. 2B, § 12-108	Licensee, any employee of the licensee.	Selling or furnishing any alcoholic beverages at any time to any person who, at the time of the sale, or delivery, is visibly under the influence of any alcoholic beverage.		
MD Code, Art. 2B, § 20-107 <u>Applies only in Howard County.</u>	Licensee, any employee of the licensee.	Facilitating in any way the continued consumption of alcoholic beverages by any patron who appears to be inebriated.		

APPENDIX B: State SIP Statutes

MASSACHUSETTS				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
M.G.L. c. 138, s. 69	Licensees and employees.	No alcoholic beverage shall be sold or delivered on any premises licensed under this chapter to an intoxicated person.		

APPENDIX B: State SIP Statutes

MICHIGAN				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
M.C.L.A. 436.1707 and M.C.L.A. 436.2025	A vendor.	Selling any alcoholic liquor to any person in an intoxicated condition.		
M.C.L.A. 436.1801 This is part of the dram shop law	A retail licensee.	Selling, furnishing, or giving alcoholic liquor to a person who is visibly intoxicated.		

APPENDIX B: State SIP Statutes

MINNESOTA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
M.S.A. § 340A.502	A person.	Selling, giving, furnishing, or in any way procuring alcoholic beverages for the use of an obviously intoxicated person.		

APPENDIX B: State SIP Statutes

MISSISSIPPI				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Miss. Code Ann. § 67-1-83	Permittee or other person.	Selling or furnishing any alcoholic beverage to a visibly or noticeably intoxicated person.		
Miss. Code Ann. § 67-3-53	1) Holder of permit for sale of beer or light wine or 2) Employee of permit holder.	Selling, giving, or furnishing beer or light wine to a visibly or noticeably intoxicated person.		

APPENDIX B: State SIP Statutes

MISSOURI				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
V. A. M. S. 311.310	Licensee, employee.	Selling, vending, giving away, or otherwise supplying any intoxicating liquor in any quantity whatsoever to: (1) Any person intoxicated or appearing to be in a state of intoxication, or to (2) habitual drunkard.		
V. A. M. S. 311.310	Any person whomsoever except his parent or guardian.	Procuring for, selling, giving away, or otherwise supplying intoxicating liquor to: (1) Any intoxicated person or any person appearing to be in a state of intoxication, or (2) habitual drunkard.		
V. A. M. S. 312.400	A person or his employee.	<p>Selling or supplying nonintoxicating beer or permitting same to be sold or supplied to: (1) Any person who is under or apparently under the influence of alcoholic beverages or (2) habitual drunkard.</p> <p>("Nonintoxicating beer" means "any beer manufactured from pure hops or pure extract of hops, and pure barley malt or other wholesome grains or cereals, and wholesome yeast, and pure water, and free from all harmful substances, preservatives and adulterants, and having an alcoholic content of more than one-half of one percent by volume and not exceeding three and two-tenths percent by weight." – See V.A.M.S. 312.010, subd. (2).)</p>		

APPENDIX B: State SIP Statutes

MONTANA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
MCA 16-3-301	Any licensee, a licensee's employee, or any other person.	Selling, delivering, or giving away, or causing or permitting to be sold, delivered, or given away any alcoholic beverage.	Any person actually, apparently, or obviously intoxicated.	
MCA 16-6-304	Store manager, retail licensee, or any employee of a store manager or retail licensee.	Selling any alcoholic beverage or permitting any alcoholic beverage to be sold.	Any person apparently under the influence of an alcoholic beverage.	

APPENDIX B: State SIP Statutes

NEBRASKA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Neb. Admin. R. & Regs. Tit. 237, Ch. 6, § 019	Licensee or partner, principal, agent, or employee of any licensee.	Selling, serving, or furnishing alcoholic beverages or allowing possession of alcoholic beverages on the licensed premise to any person who is or has become intoxicated and/or incapacitated by the consumption of alcoholic beverages and/or other drugs or who is mentally incapacitated.	A person shall be deemed to be intoxicated when it can be plainly determined by appearance, conduct, and/or demeanor. Indicators of intoxication are listed in regulation.	

APPENDIX B: State SIP Statutes

NEVADA				
Law Prohibiting	Who May be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
N. R. S. 244.350	The regulation of the sale of alcohol is a matter of local ordinance.			

APPENDIX B: State SIP Statutes

NEW HAMPSHIRE				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Title XIII Chapter 179 RSA 179:5	Licensee, salesperson, direct shipper, common carrier, delivery agent, or any other person.	Selling or giving away or causing or allowing or procuring to be sold, delivered, or given away any liquor or beverage to an intoxicated individual.	"Intoxicated individual" means an individual whose mental or physical faculties are impaired as a result of drug or alcohol use so as to diminish that person's ability to think and act in a manner in which an ordinary, prudent and cautious person, in full possession of his faculties and using reasonable care, would act under like circumstances.	

APPENDIX B: State SIP Statutes

NEW JERSEY				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
N.J.A.C. 13:2-23.1	Licensee.	Selling, serving or delivering or allowing, permitting or suffering the sale, service or delivery of any alcoholic beverage, directly or indirectly to any person actually or apparently intoxicated.		
N.J.A.C. 13:2-23.1	Licensee.	Permitting or suffering the consumption of any alcoholic beverage to any person actually or apparently intoxicated in or upon the licensed premises.		
N. J. S. A. 2A:22A-3	Licensed alcoholic beverage server.		"Visibly intoxicated" means a state of intoxication accompanied by a perceptible act or series of acts which present clear signs of intoxication.	
N. J. S. A. 33:1-12	Class III Plenary retail distribution licensee who sell any alcoholic beverages for consumption off the licensed premises, but only in original containers.	As part of a consumer wine tasting, offering samples to or allowing samples to be consumed by and intoxicated person.		

APPENDIX B: State SIP Statutes

NEW MEXICO				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated¹	Mental State of Seller
NMSA 1978, § 60-7A-16	Any person.	Selling or serving alcoholic beverages to or procuring or aiding in the procurement of alcoholic beverages for an intoxicated person if the person selling, serving, procuring or aiding in procurement, knows or has reason to know that he is selling, serving, procuring or aiding in procurement of alcoholic beverages to an intoxicated person.		Negligence standard (knows or has reason to know)
N.M. Admin. Code 15.10.51	Licensee.	Selling or serving alcoholic beverages to any person who is obviously intoxicated.		

¹

Special note: In addition to other commonly recognized tests of intoxication, a blood alcohol content level of .14 or higher on a test taken not more than one (1) hour after sale or service of alcoholic beverages shall be presumptive evidence that the purchaser was intoxicated at the time of the last sale.

APPENDIX B: State SIP Statutes

NEW YORK				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
McKinney's Alcoholic Beverage Control Law § 65	Any person.	Selling, delivering, or giving away or causing or permit or procuring to be sold, delivered or given away any alcoholic beverages to any visibly intoxicated person.		
McKinney's Alcoholic Beverage Control Law § 106	A retail licensee for on-premises consumption that is a person or corporation operating a hotel selling liquors, beer, and/or wines through a mechanical device or vending machine placed in the lodger's rooms and to which access to such device or machine is restricted by means of a locking device which requires the use of a key, magnetic card or similar device.	Providing such key, card or similar device to any person who is visibly intoxicated.		
State Liquor Authority Rules, § 49.9 McK. Consol. Laws, Book 3 App.	Bottle club licensee.	(1) Delivering, serving, or giving away or permitting or procuring to be delivered, served or given away any alcoholic beverage; or (2) Permitting to consume any alcoholic beverage in the licensed premises any intoxicated person or any person apparently under the influence of any alcoholic beverage.		

APPENDIX B: State SIP Statutes

NORTH CAROLINA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
N.C.G.S.A. § 18B-305	Permittee or his employee or an ABC store employee.	Knowingly selling or giving alcoholic beverages to any person who is intoxicated.		Knowledge required
4 NCAC 2S.0206	Permittee or his employees.	Allowing consumption of alcoholic beverages on his licensed premises by intoxicated persons.		

APPENDIX B: State SIP Statutes

NORTH DAKOTA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
NDCC 5-01-09	Any person.	Knowingly delivering alcoholic beverages to an obviously intoxicated person.		Knowledge required

APPENDIX B: State SIP Statutes

OHIO				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
R.C. § 4301.22	Permit holder and agent or employee of a permit holder.	Selling or furnishing beer or intoxicating liquor to an intoxicated person.		

APPENDIX B: State SIP Statutes

OKLAHOMA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
37 Okl. St. Ann. § 247	Holder of a retail license or permit to sell low-point beer, or an employee or agent of a holder of such a license or permit.	Knowingly, willfully, and wantonly selling, delivering, or furnishing low-point beer to an intoxicated person.		Knowledge required
37 Okl. St. Ann. § 537	Any person.	Selling, delivering, or knowingly furnishing alcoholic beverages to an intoxicated person.		Knowledge required

APPENDIX B: State SIP Statutes

OREGON				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
O. R. S. § 471.315	Licensee.	Knowingly selling alcoholic liquor to persons visibly intoxicated at the time of sale; or knowingly allowing the consumption of alcoholic liquor on the licensed premises by persons visibly intoxicated at the time of consumption.		Knowledge required
O. R. S. § 471.410	Any person.	Selling, giving, or otherwise making available any alcoholic liquor to a visibly intoxicated person.		
O. R. S. § 471.412	Licensee or permittee.	Knowingly allowing a person to consume or to continue to consume alcoholic beverages on the licensed premises after observing that the person is visibly intoxicated.		Knowledge required

APPENDIX B: State SIP Statutes

PENNSYLVANIA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
47 P.S. § 4-493	Licensee or the board, or any employee, servant, or agent of such licensee or of the board, or any other person.	Selling, furnishing, or giving any liquor or malt or brewed beverages, or permitting any liquor or malt or brewed beverages to be sold, furnished or given to any person visibly intoxicated.		
42 Pa.C.S.A. § 8522	Commonwealth of PA.	Selling liquor at Pennsylvania liquor stores by employees of the Pennsylvania Liquor Control Board to any person visibly intoxicated.		

APPENDIX B: State SIP Statutes

RHODE ISLAND				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Gen. Laws, 1956, § 3-8-1	Licensees.	Selling of alcoholic beverages to any intoxicated persons or to any person of notoriously intemperate habits.		

APPENDIX B: State SIP Statutes

SOUTH CAROLINA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Code 1976 § 61-4-580	Holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee.	Knowingly committing selling beer or wine to an intoxicated person.		Knowledge required
Code 1976 § 61-6-1500	Retail dealer.	Selling, bartering, exchanging, giving, or offering for sale, barter, or exchange, or permitting the sale, barter, exchange, or gift of alcoholic liquors to an intoxicated person.		
Code 1976 § 61-6-2220	A person or establishment licensed to sell alcoholic liquors or liquor by the drink pursuant to this article [Article 5. Regulation of Alcoholic Liquors in Minibottles].	Selling alcoholic liquors in minibottles to persons in an intoxicated condition.		

APPENDIX B: State SIP Statutes

SOUTH DAKOTA				
Law Prohibiting	Who May be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
S D C L § 35-4-78	Licensee.	Selling any alcoholic beverage to any person who is obviously intoxicated at the time.		

APPENDIX B: State SIP Statutes

TENNESSEE				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
T. C. A. § 57-3-406	Local option; off-premises retailer.	Selling any alcoholic beverages to any person who is drunk or any person accompanied by a person who is drunk.		
T. C. A. § 57-4-203	On-premises licensee or other person.	Selling or furnishing any alcoholic beverage any person who is visibly intoxicated.		

APPENDIX B: State SIP Statutes

TEXAS				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
V. T. C. A., Alcoholic Beverage Code § 101.63	Any person.	Selling with criminal negligence an alcoholic beverage to an intoxicated or insane person.		Criminal negligence.
V. T. C. A., Alcoholic Beverage Code § 106.14	[Section limiting liability of licensee.]	<p>A sale of an alcoholic beverage to an intoxicated person by an employee will not be attributable to the employer (licensee) if:</p> <p>(1) the employer requires its employees to attend a commission-approved seller training program;</p> <p>(2) the employee has actually attended such a training program; and</p> <p>(3) the employer has not directly or indirectly encouraged the employee to violate such law.</p>		

APPENDIX B: State SIP Statutes

UTAH				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
U.C.A. 1953 § 32A-12-204	Any person.	Negligently, recklessly, or knowingly selling, offering to sell, or otherwise furnishing any alcoholic beverage or product to: (1) any person who is actually or apparently intoxicated; or (2) a person whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was actually or apparently intoxicated.		negligence, recklessness, or knowledge

With

APPENDIX B: State SIP Statutes

VERMONT¹				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Vermont Dept. of Liquor Control General Regulation 19	Licensees or their employees.	Selling or furnishing alcoholic liquor to a person apparently under the influence of liquor. No alcoholic liquor may be consumed on the licensed premises by any person apparently under the influence of liquor. No person under the influence of alcoholic liquor shall be allowed to loiter on the licensed premises.		

¹ There is no provision in Vermont that makes it a crime for a licensee to sell, furnish, or otherwise provide alcohol to an intoxicated patron.

APPENDIX B: State SIP Statutes

VIRGINIA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
Va. Code Ann. § 4.1-304	Any person.	Selling any alcoholic beverages when at the time of such sale person knows or has reason to believe that the person to whom the sale is made is intoxicated.	"Intoxicated" means "a condition in which a person has drunk enough alcoholic beverages to observably affect his manner, disposition, speech, muscular movement, general appearance or behavior." Va. Code Ann. § 4.1-100	Negligence standard – has knowledge or has reason to believe
3 VAC 5-50-10	Licensee.	Selling any alcoholic beverages when at the time of such sale licensee knows or has reason to believe that the person to whom the sale is made is intoxicated.		Negligence standard – has knowledge or has reason to believe

APPENDIX B: State SIP Statutes

WASHINGTON				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
West's RCWA 66.44.200	Any person.	Selling any liquor to any person apparently under the influence of liquor.		
WA ADC 314-11-035	Licensees or employees.	Supplying liquor to any person apparently under the influence of liquor. Allowing an apparently intoxicated person to possess or consume liquor on the licensed premises.		
WAC 314-16-150	Retail licensee.	Giving or otherwise supplying any liquor to any person apparently under the influence of liquor.		
WA ADC 314-18-070	Banquet permittee, or employee thereof.	Serving or permitting the consumption of liquor by an apparently intoxicated person(s) on the premises for which a banquet permit has been issued.		

APPENDIX B: State SIP Statutes

WEST VIRGINIA				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
W. Va. Code, § 11-16-18	Any licensee, his, her, its or their servants, agents or employees.	Selling, furnishing, or giving any nonintoxicating beer to any person visibly or noticeably intoxicated or any person known to be a habitual drunkard.		
W. Va. Code St. R. § 176-1-6	Any licensee, his, her, its or their servants, agents or employees.	Selling, furnishing, or giving any nonintoxicating beer to any person visibly or noticeably intoxicated, or to any person known to be a habitual drunkard.		
W. Va. Code, § 60-3-22	Sellers of alcoholic beverages. (Court decision clarified this. See <i>Overbaugh v. McCutcheon</i> , 183 W.Va. 386, 396 S.E.2d 153 (1990).	Selling alcoholic liquors or nonintoxicating beer to a person who is intoxicated.		
W. Va. Code, § 60-3A-25	Any retail licensee, or agent or employee.	Selling, giving away, or permitting the sale of, gift of, or the procurement of, any liquor for or to any person visibly intoxicated.		
W. Va. Code St. R. § 175-5-25	Any retail licensee, or agent or employee.	Selling, giving away, or permitting the sale of, gift of, or the procurement of, any alcoholic liquor for or to any person visibly intoxicated.		
W. Va. Code, § 60-7-12	Any private club licensee, or agent, employee or member thereof.	Selling, giving away, or permitting the sale of, gift to or the procurement of any nonintoxicating beer, wine or alcoholic liquors for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs.		
W. Va. Code, § 60-8-20	Licensee, his or her servants, agents or employees.	Selling, furnishing or giving wine to any person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs.		

APPENDIX B: State SIP Statutes

WISCONSIN				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
W. S. A. 125.07	Any person, licensee, or permittee.	Procuring for, selling, dispensing, or giving away alcohol beverages or selling, vending, dealing, or trafficking in alcohol beverages to a person who is intoxicated.		

APPENDIX B: State SIP Statutes

WYOMING				
Law Prohibiting	Who May Be Held Liable?	Liable for What Act?	Definition of Intoxicated	Mental State of Seller
W. S. 1977 § 12-5-301	Holder of a retail liquor license with a drive-in area adjacent or contiguous to the licensed room.	Delivering alcoholic liquor or malt beverages to an intoxicated person.		

APPENDIX C: SIP Case Law

ALABAMA	
Citation	Analysis
<p><i>Krupp Oil Company, Inc. v. Mack Yeargan, et al.</i>, 665 So.2d 920.</p>	<p>Statute prohibiting sales to intoxicated persons is not overly broad or vague. Court found that a person of common intelligence would understand that someone "appearing to be intoxicated" could exhibit some or all of the following: the smell of alcohol on the breath; loud or boisterous behavior; slurred speech; glassy eyes; and unsteadiness. This list is not meant to be exhaustive, but it indicates the kind of evidence that supports certain elements of criminal charges involving intoxication.</p>
ALASKA	
Citation	Analysis
<p><i>Kavorkian v. Tommy's Elbow Room, Inc.</i>, 694 P.2d 160 Alaska, 1985.</p>	<p>On summary judgment motion, court concluded that legislative history discussing "criminal negligence" of seller for AS 04.16.030 supported placing an affirmative duty on employees to use their powers of observation "to see that which can be easily seen, and hear that which can be easily heard...to determine whether the person is...drunken." Further, the court determined that it is a factual question for the jury to determine if the outward manifestations of drunken person were observable and recognizable as usual indications of intoxications, and therefore, would determine if the server acted with criminal negligence in serving such patron.</p> <p>On determination of whether the patron was a "drunken person", court reviewed conflicting evidence regarding patrons "outward manifestations" of drunkenness, including whether patron had ability to play foosball, whether patron was staggering, whether patron bumped into tables and whether patron was slurring his words. Court determined that based on conflicting testimony, reasonable jurors could disagree over the extent of patron's drunkenness.</p>
ARIZONA	
Citation	Analysis
<p><i>Callender v. Transpacific Hotel Corp.</i>, 179 Ariz. 557, 880 P.2d 1103 (1993).</p>	<p>Determination that patron of liquor licensee was not obviously intoxicated when he purchased a second bucket of drinks was supported by sufficient evidence that first bucket was consumed quickly with friends, patron returned immediately to bar for another, and patron did not appear intoxicated to rescue personnel after his diving crash.</p>
<p><i>Thompson v. Bryson</i>, 19 Ariz.App. 134, 505 P.2d 572 (1973).</p>	<p>Term "under influence of intoxicating liquor," in § 28-692 providing that if there was 0.10% or more by weight of alcohol in defendant's blood, it shall be presumed that defendant was under influence of intoxicating liquor, is not synonymous with "intoxicated" in this section making it unlawful for a licensee to serve spirituous liquor to an intoxicated person.</p>

APPENDIX C: SIP Case Law

CALIFORNIA	
Citation	Analysis
<p><i>Paez v. Alcoholic Beverage Control Appeals Bd.</i>, 222 Cal.App.3d 1025, 272 Cal.Rptr. 272 (1990).</p>	<p>Opinion evidence from police officer that patron’s intoxication was “obvious” was allowed, and jury is free to disregard or agree with the opinion. Overruling parts of <i>Johnson</i> and <i>People v. Smith</i>, the <i>Paez</i> court recognized that with the adoption of <u>Evidence Code section 805</u> testimony in the form of an opinion is not objectionable because it embraces the ultimate issue to be decided by the trier of fact. However, the precedential value of <i>Johnson</i> and <i>Smith</i> remains unaffected for the purposes of this case.</p>
<p><i>People v. Johnson</i>, 81 Cal.App.2d Supp. 973, 185 P.2d 105 (1947).</p>	<p>In prosecution for selling alcoholic beverage to obviously intoxicated person, whether outward manifestations of such person's intoxication, as shown by evidence, were obvious to person having normal powers of observation and recognizable as usual indications of intoxicated person, was jury's exclusive province to determine. Further, seller has a duty to observe patron before selling alcoholic beverages. But seller is not required to make a patron undergo tests to determine whether patron is intoxicated.</p> <p>(Overruled only as to issue of stating opinion of “obvious” was not allowed. See above for explanation.)</p>
<p><i>People v. Smith</i>, 94 Cal.App.2d Supp. 975, 210 P.2d 98 (1949).</p>	<p>Government has to burden to prove that patron was intoxicated.</p> <p>The conclusion of the court that the patron was “obviously” intoxicated at the time defendant served him was sustained by evidence that the patron talked loudly, spilled some of the beer he was drinking, fell against a witness, set the glass on the bar rather heavily several times, and asked in a loud voice for another glass of beer; also by evidence that his balance was poor, face flushed, speech thick, and eyes bloodshot; his clothing was disarranged, and he kept arguing with another person. In order to convict one on a charge of violating the statute here involved two elements, touching the person served with liquor, must be proved: (1) that he was intoxicated; and (2) that his condition was obvious.</p>
<p><i>Schaffield v. Abboud</i>, 15 Cal.App.4th 1133, 19 Cal.Rptr.2d 205 Cal.App. 4 Dist. (1993).</p>	<p>The standard to determining “obvious intoxication” is that of a reasonable person.</p> <p>The <i>Schaffield</i> court held that the following was the proper test for proving “obvious intoxication”: "The use of intoxicating liquor by the average person in such quantity as to produce intoxication causes many commonly known <i>outward</i> manifestations which are 'plain' and 'easily seen or discovered.' If such outward manifestations exist and the seller still serves the customer so affected, he has violated the law, whether this was because he failed to observe what was plain and easily seen or discovered, or because, having observed, he ignored that which was apparent." Evidence supporting visible or outward signs of intoxication include, “incontinence, unkempt appearance, alcoholic breath, loud or boisterous conduct, bloodshot or glassy eyes, incoherent, slow, deliberate or slurred speech, flushed face, poor muscular coordination, unsteady or slow and deliberate walk, loss of balance, impaired judgment or argumentative behavior.” A visibly intoxicated person must show one or more of these signs insufficiency to establish visible intoxication as opposed to showing an individual that has merely been drinking.</p>

APPENDIX C: SIP Case Law

CONNECTICUT	
Citation	Analysis
<p><i>State v. Katz</i>, 122 Conn. 439, 189 A. 606 (1937).</p>	<p>The court stated that it was not necessary to formulate a definition for intoxication because the condition of intoxication brought with it behavior that was a matter of general knowledge. Here the court determined that staggering was a common condition of intoxication and therefore could support a factual determination that a person was intoxicated. Further, the court disagreed with the challenge that the term “intoxicated person” in the statute was to vague and uncertain to be enforceable</p>
<p><i>Wentland v. American Equity Ins. Co.</i>, 267 Conn. 592, 840 A.2d 1158 (2004).</p>	<p>The court stated that intoxication requires something more than merely being under the influence of alcohol. The court also held that there are no inherent behaviors that would prove intoxication as a matter of law. Rather, it is for the fact-finder to base a decision on whether a person is intoxicated by a review the evidence presented.</p>
<p><i>Sanders v. Officers Club of Connecticut, Inc.</i>, 196 Conn. 341, 493 A.2d 184 (1985).</p>	<p>Pursuant to a dram shop action, the court held that intoxication is more than simply being under the influence of alcohol, but that it “means an abnormal mental or physical condition due to the influence of intoxicating liquors, a visible excitation of the passions and impairment of the judgment, or a derangement or impairment of physical functions and energies.” Further, the court noted an intoxicated person “need not be “dead-drunk.” It is enough if by the use of intoxicating liquor he is “so affected in his acts or conduct that the public or parties coming in contact with him can readily see and know this is so.”</p>

DELAWARE	
Citation	Analysis
<p><i>Down Under, Ltd. v. Delaware Alcoholic Beverage Control Com'n</i>, 576 A.2d 675 (1989).</p>	<p>On a constitutional challenge to the statute against sales to intoxicated persons for vagueness, court held that intoxication was a matter of common intelligence when applied to convictions for selling to an intoxicated person. Proceedings before the Commission to revoke, suspend or fine a licensee are not criminal proceedings but civil proceedings, even when revocation or other action is sought because of the violation of a criminal statute. Because the proceedings are civil, they not require a showing beyond a reasonable doubt, even if the underlying penalty is from the penal code and instead require a showing of substantial evidence.</p> <p>Results of a breathalyzer test are admissible as evidence.</p>

APPENDIX C: SIP Case Law

GEORGIA	
Citation	Analysis
<p><i>Studebaker's of Savannah, Inc. v. Tibbs</i>, 195 Ga.App. 142, 392 S.E.2d 908 (1990).</p>	<p>Court allowed Physician's expert testimony stating that breathalyzer test, without stating any numbers from the test, contributed to the diagnosis of acute alcohol intoxicated. Testimony concerning observation of patient and hospital records was admitted into evidence.</p> <p>Evidence was sufficient to create a jury question as to whether Studebakers furnished alcohol to a "noticeably intoxicated" patron despite testimony from the customer's son and his co-worker that customer did not appear intoxicated while at Studebakers. The court held that there was other direct evidence that the patron was noticeably intoxicated, including, the physician's testimony of acute alcohol intoxication, the length of time spent by the patron at Studebaker's and the testimony that the patron had not eaten in more than 24 hours.</p>
HAWAII	
Citation	Analysis
<p><i>State v. Mata</i>, 71 Haw. 319, 789 P.2d 1122 (1990).</p>	<p>The phrase 'under the influence of intoxicating liquor' in a statute prohibiting driving under the influence does not have the same meaning as the phrase '[u]nder the influence of liquor' as used in this section, since this chapter and the DUI provisions in Chapter 291 apply to different situations, and are not in pari materia.</p>
<p><i>Life's A Beach Club, Inc. v. Liquor Control Adjudication Bd.</i>, 100 Hawai'i 33 (2002).</p>	<p>Life's a Beach, an unreported case, holds that the definition for "under the influence" is not void for vagueness. Further, the court states that the administrative board did find by a preponderance of evidence that the licensee did serve an intoxicated patron and that factors including erratic behavior were sufficient to find that the licensee "knew or should have known" that the patron was "under the influence."</p>
<p><i>Ono v. Applegate</i>, 62 Haw. 131 (1980).</p>	<p>Statute prohibiting the sales to intoxicated persons requires a showing of knowledge or notice, so that in order to impose a violation of the statute, it must be shown that licensee knew or reasonably should have known patron was intoxicated.</p>
ILLINOIS	
Citation	Analysis
<p><i>People v. Rhodes</i>, 243 Ill.App.3d 701, 612 N.E.2d 536 (1993).</p>	<p>In an action against seller of liquor to minors, where the alleged intoxicating liquor was shown to be one of the liquors mentioned in the statute, its intoxicating quality did not need to be shown by the evidence.</p>

APPENDIX C: SIP Case Law

INDIANA	
Citation	Analysis
<p><i>Gariup Const. Co., Inc. v. Foster</i>, 519 N.E.2d 1224 (1988).</p>	<p>“Violation of the misdemeanor statute proscribing furnishing alcoholic beverages to an intoxicated person requires proof that the provider either had as his conscious objective, or was aware of a high probability, that he was providing alcoholic beverage to an intoxicated recipient.”</p> <p>Breathalyzer test coupled with medical testimony of test’s significance properly admitted as probative evidence of intoxication.</p>
<p><i>Ashlock v. Norris</i>, 475 N.E.2d 1167 (1985).</p>	<p>There are many factors to demonstrate knowledge of a person’s intoxication; including what and how much the person was known to have consumed, the time involved, the person's behavior at the time, and the person's condition shortly after leaving.</p>

MASSACHUSETTS	
Citation	Analysis
<p><i>Vickowski v. Polish American Citizens Club of Town of Deerfield, Inc.</i>, 422 Mass. 606, 664 N.E.2d 429 (1996).</p>	<p>Direct evidence of obvious intoxication is not necessarily an essential part of a plaintiff's proof. This court has observed that “service [to a patron] of a large number of strong alcoholic drinks [would be] sufficient to put [a licensee] on notice that it was serving a [patron] who could potentially endanger others.” <i>Cimino v. Milford Inc.</i> In other words, a jury confronted with evidence of a patron's excessive consumption of alcohol, properly could infer, on the basis of common sense and experience, that the patron would have displayed obvious outward signs of intoxication while continuing to receive service from the licensee. See P.J. Liacos, Massachusetts Evidence § 4.2, at 118-119; § 5.8.6, at 242-244 (6th ed. 1994 & Supp.1994). In the <i>Cimino</i> case, the evidence was that the patron had been served six or more “White Russians' (an intoxicating beverage containing vodka and coffee-brandy liqueur).”</p>
<p><i>Powers Package Store, Inc. v. Natick Bd. of Selectman</i>, 15 Mass.L.Rptr. 319 (2002). Not Reported in N.E.2d.</p>	<p>Patron’s admission that he was intoxicated at the time he was served alcohol was not enough to establish that the intoxication was observable to the server for violation of the statute.</p>
<p><i>A.C. Cruise Line, Inc. v. Alcoholic Beverages Control Com'n</i>, 29 Mass.App.Ct. 319, 560 N.E.2d 145 (1990).</p>	<p>Cruise line brought action seeking review of Alcoholic Beverages Control Commission's decision suspending its liquor license for various violations. On appeal, the court held that statute prohibiting selling or delivering alcoholic beverages to an intoxicated person did not impose duty on licensee to exercise reasonable care to assure that no alcoholic beverage would find its way into hands of intoxicated person.</p>

APPENDIX C: SIP Case Law

MINNESOTA	
Citation	Analysis
<i>Jewett v. Deutsch</i> , 437 N.W.2d 717 (1989).	Jury finding of obvious intoxication was supported by sufficient evidence, which established that motorist's blood-alcohol content was .27 one hour after arrest, approximately 10 to 15 beers were consumed in one and one-half hours, and that there was disorientation. Further, using reasonable powers of observation, one sees, or should see intoxication.
<i>Seeley v. Sobczak</i> , 281 N.W.2d 368 (1979).	Obviously intoxicated not the same as "under the influence." BAC alone does not establish "obvious intoxication as a matter of law. The seller must determine from what he observes whether the buyer has reached a point of saturation where it would be illegal to sell him more liquor.
<i>Knudsen v. Peickert</i> , 301 Minn. 287, 221 N.W.2d 785 (1974).	Reinstatement of prohibition of sale of intoxicating liquor to any person "obviously intoxicated" means that dispenser of intoxicating liquor does not have affirmative duty of prohibiting sale of liquor to person bearing signs of intoxication not readily detectable by ordinary observation.

MISSISSIPPI	
Citation	Analysis
<i>Estate of White ex rel. White v. Rainbow Casino-Vicksburg Partnership, L.P.</i> , 910 So.2d 713 (2005).	The court of appeal held there was no triable issue of fact that plaintiff was "visibly intoxicated," within the meaning of sections 67-1-83(1), 67-3-53, and 67-3-73, prohibiting sales to visibly intoxicated persons. Despite evidence that licensee served patron a minimum of 6 drinks, there was not sufficient evidence to establish obvious intoxication where patron where patron visited the restroom a number of times, gambled among many slot machines, and conversed with her husband throughout the day.

MONTANA	
Citation	Analysis
<i>Cusenbary v. Mortensen</i> , 296 Mont. 25, 987 P.2d 351 (1999).	MCA 46-18-212 prohibits a tavern owner from furnishing alcohol to a visibly intoxicated person. This does not mean that the tavern owner must assess the medical condition of a patron in conjunction with the patron's level of intoxication. Rather, the tavern owner is simply responsible for assessing visible intoxication, regardless of the physical ability and condition of the patron. Furthermore, evidence from toxicologist regarding BAC was admissible as evidence for whether patron displayed visible signs of intoxication when served alcohol.

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NEW YORK	
Citation	Analysis
<p><i>Sorensen v. Denny Nash Inc.</i>, 249 A.D.2d 745, 671 N.Y.S.2d 559 (1998).</p>	<p>It was not established that witness' professional experience as a physician specializing in forensic pathology sufficed to support an inference that he is qualified to render an opinion correlating driver's blood alcohol content to visible signs of intoxication, for purposes of establishing bar's Dram Shop Act liability.</p> <p>Proof of a high alcohol count in an individual served alcohol does not, without more, provide a sound basis for drawing inferences about that person's appearance or demeanor, for purposes of Dram Shop Act liability.</p> <p>Circumstantial evidence was insufficient to establish automobile driver's visible intoxication during time period that he patronized bar, for purposes of imposing Dram Shop Act liability on bar owner, though affidavit of forensic pathologist inferred that because driver, who later went to another bar, consumed certain amount of alcohol and exhibited signs of intoxication when he struck pedestrians, he must have been intoxicated during period three hours before when he was patronizing bar and, more importantly, appeared so.</p>
<p><i>T.K.O. Enterprises Inc. v. New York State Liquor Authority</i>, A.D.2d 646, 641 N.Y.S.2d 133 (1996).</p>	<p>Substantial evidence supported State Liquor Authority's determination that bar and grill, which had on premises liquor license, served alcohol to visibly intoxicated individual in violation of the law; police officer testified that, while he was standing at entrance to bar, he observed, from a distance of about five to ten feet and for about 15 minutes, an extremely intoxicated man who had one drink in front of him and who was being served bottle of beer by bartender and testimony of bar's witnesses established that they knew that the man was intoxicated.</p>
<p><i>Adamy v. Ziriakus</i>, 231 A.D.2d 80, 659 N.Y.S.2d 623 (1997).</p>	<p>Although there was no direct proof in dram shop action against restaurant that patron was served alcoholic beverages while he was visibly intoxicated, visible intoxication was sufficiently proved by circumstantial evidence, such as testimony of police officers who observed patron in intoxicated condition less than one hour after he left restaurant, by amount of alcohol in patron's blood approximately 90 minutes after accident, and by opinion of expert that blood alcohol content (BAC) of driver while he was at restaurant was at least .2% and thus he would have been visibly intoxicated.</p>
<p><i>Roy v. Volonino</i>, 262 A.D.2d 546, 694 N.Y.S.2d 399 (1999).</p>	<p>Affidavits of a forensic toxicologist and an eyewitness were sufficient to raise a triable issue of fact as to whether a tavern patron was visibly intoxicated when the defendant tavern served him alcohol during his 30- to 45- minute visit there, which was sandwiched between his visits to another tavern; accordingly, defendant was not entitled to summary judgment dismissing a Dram Shop Act claim arising out of the patron's involvement in a fatal automobile accident occurring shortly after he left the other tavern for the second time.</p>

APPENDIX C: SIP Case Law

NORTH DAKOTA	
Citation	Analysis
<i>Jore v. Saturday Night Club, Inc.</i> , 227 N.W.2d 889 (1975).	Fact that term “under the influence of intoxicating liquor” has a specialized, well-defined meaning would indicate that, through its omission from Dram Shop Act, legislature did not intend to embody its meaning therein. Instruction in dram shop action that a person is intoxicated when his manner is unusual or abnormal or his intoxicated condition is reflected in his walk or conversation, when his ordinary judgment and common senses are disturbed, when his will power is temporarily suspended, and these or similar symptoms result from use of alcoholic beverages and become reasonably discernible to a person of ordinary experience was not erroneous in absence of a clear statement from legislature as to definition of “intoxication.”
<i>Meshefski v. Shirnan Corp.</i> , 385 N.W.2d 474 (1986).	A vendor of alcoholic beverages should not deliver alcoholic beverages to a person who exhibits outward manifestation of intoxication, regardless of the cause of the intoxication.

OKLAHOMA	
Citation	Analysis
<i>Copeland v. Tela Corp.</i> 996 P.2d 931 (OK 1999)	In a dram shop case, indirect evidence, including testimony from a police officer regarding a patron’s intoxication after leaving the premises, the conditions of the establishment that made observation difficult, and the lack of RBS training, may be sufficient to establish that a server knew or should have known of the patron’s visible intoxication. The lack of direct evidence that the server observed visible signs of intoxication is not required. “A commercial vendor’s self-imposed ignorance concerning the intoxication of its patrons should not operate in its favor to prevent a jury determination of that issue.”

PENNSYLVANIA	
Citation	Analysis
<i>Ashman v. Com., Pennsylvania Liquor Control Bd.</i> , 542 A.2d 217, 116 Pa.Cmwlth. 580 (1988).	Testimony of Liquor Control Board enforcement officer was sufficient to establish that licensee served visibly intoxicated person in violation of Liquor Code; officer testified that patron at licensee’s bar used slurred speech, had glassy eyes, and experienced difficulty walking.

APPENDIX C: SIP Case Law

TEXAS	
Citation	Analysis
<i>Campos v. State</i> , 623 S.W.2d 657 (1981).	Since V. T. C. A., Alcoholic Beverage Code § 101.63 proscribing knowingly selling alcoholic beverage to intoxicated person does not define intoxicated and the term is not otherwise statutorily defined for purpose of statute, the word is to be given its commonly understood meaning.
<i>El Chico Corp. v. Poole</i> , 732 S.W.2d 306 (1987).	"Intoxication" within duty of liquor licensee not to serve an intoxicated person pursuant to V. T. C. A., Alcoholic Beverage Code § 101.63 refers to a condition when, due to the consumption of alcoholic beverages, a person suffers impaired mental or physical faculties and resulting diminution of the ability to think and act with ordinary care.

VERMONT	
Citation	Analysis
<i>In re Con-Elec Corp.</i> , 168 Vt. 576, 716 A.2d 822 (1998).	The Board found that "the licensee had permitted [the patron] to consume vastly excessive amounts of alcoholic beverages and to remain on the premises for far too long for her safety and for the safety of the general public." Licensee argues that the patron was "shut off" as soon as her intoxication was noticed. Further, licensee argues that the patron failed to cooperate with licensee's attempts to send her home and that licensee "did all that it could" to remove her in a timely manner, and that the Board failed to consider the licensee's efforts. The evidence supports the Board's findings and its conclusion that the licensee allowed an intoxicated patron to remain on the licensed premises. Regardless of the efforts made by licensee, it was within the Board's discretion to decide that those efforts were too little too late and that the licensee had failed in its duty to prevent the loitering of an intoxicated person. We find no error.
In re Tweer, 146 Vt. 36, 38, 498 A.2d 499, 500-01 (1985)	The prohibition of sales to a person "apparently" under the influence of liquor requires that the purchaser's intoxication be observable. Moreover, the observation must be made by the one selling the liquor. It is not enough that the purchaser's intoxication was apparent to someone else. The seller, of course, is not permitted to close his eyes to that which is apparent. The seller has a duty to observe that which is observable to a reasonable person. See <i>People v. Johnson</i> , 81 Cal. App. 2d Supp. 973, 975, 185 P.2d 105, 106 (Dep't Super. Ct. 1947).

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WEST VIRGINIA	
Citation	Analysis
<i>Bailey v. Black</i> , 394 S.E.2d 58, 183 W.Va. 74 (1990).	Under W. Va. Code, § 60-7-12 proscribing private club liquor licensee from selling alcohol to anyone who is physically incapacitated by drinking, language "physically incapacitated" requires that seller or its agents be capable of knowing that buyer is drunk; standard is that buyer exhibited some physical sign of drunkenness, such that reasonably prudent serving personnel could have known that buyer was drunk. <i>Bailey v. Black</i> , 394 S.E.2d 58, 183 W.Va. 74 (1990).

APPENDIX D: Telephone Interview Protocol

LAWS PROHIBITING SALES TO INTOXICATED PERSONS Enforcement Agency Telephone Interview Protocol

Interviewer: _____

Date: _____

State: _____

Agency Name: _____

Address: _____

License or Control State: _____

Dual Licensing Authority? (yes/no) _____

Hi, my name is _____. I am working on a grant for the National Highway Traffic Safety Administration to analyze laws prohibiting sales to intoxicated persons.

The purpose of my call is to ask you some questions about the laws in your state so that I can develop a better understanding of the statutes and regulations that pertain to prohibiting sales and/or service of alcohol to intoxicated persons.

I have provided you with a chart, listing the laws, penalties and cases we have identified in your state regarding sales to intoxicated persons. I would like to go over that chart with you and then ask some follow-up questions.

Part 1: Confirming Information on the Charts

(These questions follow the chart provided to the informant.)

1. Have you had a chance to review the chart we provided listing the various laws for sales to an intoxicated person? (*proceed even if they haven't had a chance*)
2. In the top chart, can you confirm if this is the correct statute(s) (or regulation(s)) prohibiting selling alcohol to an intoxicated person?
3. Under the box for "DEFINITION on INTOX", we noted if there were any special statutory definitions or information provided in case law to help define intoxication OR we just pulled the language from the statute/regulation describing the type of patron (e.g. visible intoxication, obvious intoxication, intoxicated person). Are you aware a different definition or of any rulings or statutory definitions for "intoxicated" that we missed?
4. Is this same definition used in Administrative Proceedings?
5. Under the box for "STANDARD OF PROOF", we identified any laws or case-law dealing with the culpable mental state of the seller. From your knowledge, does your statute require a culpable mental state for a person to be found guilty of the law that

APPENDIX D: Telephone Interview Protocol

forbids serving alcohol to an intoxicated person? For instance, must they know or recklessly disregard that the person is intoxicated, or can there be a violation if they “should have known”?

6. Are these the same standards of proof used in administrative actions?
7. In the next chart we identified the penalties. Are these the correct statutory and administrative citations for the penalties?
8. Are you aware of any additional penalties? Can you list those penalties and citations?
9. In the final chart, we have identified some of the case-law that discussed the prohibition of sales to intoxicated persons. Do you recognize these cases?
10. Do you agree with the summary of the case law listed here?
11. Are you aware of other cases that discuss the sales to intoxicated prohibition?
12. Are there any laws, regulations, or cases not on this chart that you think I should be aware that deal with prohibiting sales to an intoxicated patron?

Part 2: Administrative Proceedings

13. *[If selling to an intoxicated person is criminal – see Part 1]* Does your state law permit your agency to bring a criminal complaint in court? If so, explain procedures.
14. Can violations of *[specify law from Part 1]* lead to administrative action?
15. Who makes the decision within your agency to bring a administrative complaint or request for action against a person or business for overservice?
16. What is the forum (e.g., ALJ, central hearings bureau, licensing agency hearing officer, liquor commission or liquor board, etc.)?
17. *(If there is more than one statute or regulation)* Which specific statute, regulation, or local ordinance is typically applied to these cases?
18. Please briefly describe the administrative process.
19. What must be proved in order to establish a violation? For example, must your reporting person make personal observations to bring a case, such as witnessing the person for a period of time; witnessing an employee serve alcohol directly to a customer, or witnessing another triggering event?

APPENDIX D: Telephone Interview Protocol

20. Assuming that the agency establishes a prima facie case, what affirmative defenses are available (e.g., staff was trained)? (*Ask for citation in the law to these defenses*)
21. Does your agency have exclusive jurisdiction to bring an administrative case against a licensee?
22. (*IF NO to 21*) If you don't have exclusive jurisdiction, please describe how complaints can be brought administratively by other persons or agencies.
23. Are administrative cases brought against the employee who served the intoxicated patron, the licensee, or both?
24. Can we find the written findings on the outcome of these cases? Are the cases and their findings posted anywhere that we can access?
25. Has the hearing agency established any rulings or procedures that outline what the complaint must contain in order sustain an action for selling to an intoxicated patron?
26. Are there any special administrative complaint filing procedures required for providing the licensee with adequate notice and/or due process.
27. (*IF NO TO 26*) Why not?
28. (*IF YES TO 26*) Where are these procedures published?

Part 3: Administrative Penalties

29. Going back to the penalties, are the penalties described in the table the correct range of penalties that can be imposed by the hearing authority for a first offense?
30. What is the typical penalty applied to a case that does not have significant mitigating or aggravating factors?
31. Does the administrative penalty process provide for enhanced penalties if a licensee engages in repetitive behavior?
32. If the penalties are not clearly prescribed, then how are penalties fashioned by the hearings officer or board?
33. Does the hearing officer or board have the authority to impose sanctions other than license suspension and/or fines (e.g. can the licensee also be ordered to send employees to training, can the penalty be held in abeyance to allow the licensee to engage in independent 3rd party monitoring, etc.)?
34. Is there data (on a quarterly or annual basis) available regarding the number of violations for a licensee selling to an intoxicated patron? If so, who maintains it?

APPENDIX D: Telephone Interview Protocol

Part 4: Local Jurisdictions

35. To your knowledge, are there any local ordinances in your state that make sales to intoxicated persons a criminal or civil offense?
36. Does your agency refer such administrative cases to local jurisdictions for possible prosecution?
37. If local authorities with licensing authority have the ability to impose penalties for sales to intoxicated persons, are their penalties reported to the state agency or authority?
38. If local hearings are allowed, can the state conduct its own hearing and impose a separate penalty for the same violation?

Part 5: General Questions

39. Does your agency keep statistics of any kind with respect to the referral of police cases involving alcohol overservice (sales to intoxicated persons) involving a licensee?
40. Are you aware of any innovative programs to enforce these laws currently being implemented out in the field (e.g., the Washington place of last drink program)?

APPENDIX E: On-Site Agency Interview Protocol

LAWS PROHIBITING SALES TO INTOXICATED PERSONS Enforcement Agency On-Site Interview Protocol

I. Enforcement of SIP laws:

- a. Is the sale of alcohol to intoxicated persons a significant problem in your state? Yes No
 - i. If yes:
 1. Why do you think this is so? Please describe the problem.
 2. What are the consequences of this problem for the public and law enforcement?
- b. In your opinion, has the enforcement of SIP laws been given sufficient priority in your state? Yes No
 - i. If yes, what has facilitated the enforcement of SIP laws in your state?
 - ii. If not, what are the barriers to enforcement of SIP laws?
 1. How was this accomplished (what programs are in place to facilitate enforcement, such as POLD, etc.)?
- c. If more funds and resources were made available, would you expand your SIP enforcement operations? Yes No
 - i. If yes, how would you propose to expand the enforcement operations?
 - ii. If yes, please make an estimate as to the quantity/type of funds and resources needed for expansion.

II. Special SIP enforcement programs:

- a. What programs have been implemented to enforce SIP laws?
- b. Please describe their history:
 - i. When did they start;
 - ii. Why were they implemented;
 - iii. How are they implemented;
 - iv. Who implements them?

APPENDIX E: On-Site Agency Interview Protocol

- c. Has/have the program(s) been effective? Yes No
- i. What aspect(s) of the program has/have made it effective?
 - ii. If there are problems, what have they been and how do you think they can be overcome?
- d. Does implementation require coordination with other state and/or law enforcement agencies? Yes No
- i. If so, which agencies, and how are the programs coordinated?
 - ii. How effectively has this coordination worked?
 1. If the coordination has not worked effectively, what barriers or problems exist to prevent the coordination?
 2. What could be done to improve coordination?
- e. Do you have data on the implementation of the program, and has it been utilized to evaluate the program or for other purposes? Yes No Please describe.
- i. How extensive and detailed are the data—e.g. does the database include all data since inception of the program?
 - ii. How available are the data; are they in a readily accessible format? Yes No
 1. Please describe:
 - iii. If it hasn't already been used to evaluate the program, do you think that it could be useful for demonstrating the effectiveness of the program to policymakers, or for evaluating problems?
- f. Have other states used your program as a model for their own programs? Yes No
- i. If yes, please explain.

III. Legal Process:

- a. Wording of law:
- i. Does the wording of the SIP law in your state make it difficult to enforce in any way? Yes No
 - ii. If yes, please describe.
 - iii. Could the wording of the law be expanded or rewritten to make it more effective? Yes No

APPENDIX E: On-Site Agency Interview Protocol

1. If yes, please describe.
- b. Administrative hearing process:
 - i. Please describe the administrative hearing process for the prosecution of SIP cases against licensees:
 1. What are the typical steps of the process?
 2. How long does the process usually take, from initial citation to final resolution?
 - ii. Do you think that the hearing process could be improved? Yes No
 1. If yes, how could it be improved?
- c. Requirements for evidence:
 - i. What are the requirements for evidence in order to successfully prosecute a SIP case against a licensee?
 - ii. Do these requirements create any barriers to successful prosecution, and if so, how so?

IV. Penalties:

- a. In your opinion, are the penalties mandated for violations of this law sufficient? Serve as a deterrent? Insufficient?
 - i. If penalties do not serve as a deterrent, why is this so, and what could change to make them more effective?
- b. Are penalties discretionary? Yes No
 - i. If so, do you think that they are imposed in such a way as to deter future violations?
 - ii. If so, are they most frequently imposed at the minimum level? Maximum level? Neither, depends on case.
 - iii. If not, why not?

V. Other comments:

- a. Do you have any other comments that you would like to add on the topic of SIP enforcement?

Thank you!

