



St. Lawrence County Office of the District Attorney

48 Court Street, County Courthouse
Canton, New York 13617-1169
Telephone: 315-379-2225 ❖ Fax: 315-379-2301

Nicole M. Duvé
District Attorney

Spring 2011

NEWSLETTER

With the Prom and Graduation Season once again upon us, celebrations of all types are being planned by and for the young adults in our community. For this reason, we take this opportunity to review some of the laws that concern the issue of under-aged drinking and the consequences that may follow should any alcohol related incidents occur.

MINORS AND ALCOHOL

Penal Law § 260.20 (2), which defines the crime of **Unlawfully Dealing with a Child in the First Degree**, provides that it is a class A misdemeanor to give, sell or cause to be given or sold any alcoholic beverage to a person less than twenty-one years old. There is an exception for a parent or guardian who provides alcoholic beverages to his or her own child. However, civil and criminal penalties may still attach where a parent gives their own child alcohol and that child becomes ill or injured or injures someone else. Additionally, there is no exception or defense for a person who gives or sells alcohol to someone else's child or an under-aged person with the understanding the under-aged person was merely acting as an "agent" for someone else.

Penal Law § 260.21 (1), which defines the crime of **Unlawfully Dealing with a Child in the Second Degree**, provides that it is a class B misdemeanor for an owner, lessee, manager or employee of a place where alcoholic beverages are sold or given away to permit a child less than sixteen years of age to be present unless: a) the child is accompanied by a parent or guardian or an adult authorized by a parent or guardian; b) the entertainment or activity is being conducted for the benefit of or under the auspices of a non-profit school, church or other educational or religious institution; c) otherwise permitted by law to do so; or d) the establishment is closed to the public for a specified period of time to conduct an activity or entertainment, during which the child is in or remains in such establishment, and no alcoholic beverages are served, given away or consumed.

Under **Alcohol Beverage Control Law § 65-b**, the first conviction of a person under the age of twenty-one who uses false identification to purchase alcohol can result in a fine up to \$100 and/or up to 30 hours of community service and completion of an alcohol awareness program. In addition, the person's privilege to drive or ability to become licensed can be suspended for 90 days if his or her license is used to purchase or attempt to purchase alcohol unlawfully. Fines and periods of license suspension increase for a second or subsequent offense with fines reaching \$750 and suspensions for a year or through the person's 21st birthday, whichever is longer. Such conduct could also constitute the misdemeanor and/or felony crimes of Criminal Impersonation, Forgery and Criminal Possession of a Forged Instrument depending on the type of identification and how it was used, altered or made.

Under **Alcohol Beverage Control Law § 65-c**, it is also unlawful for a person under the age of 21 to possess any alcoholic beverage with the intent to consume it unless the alcohol was given to the under-aged person by a parent or guardian or as part of a properly licensed educational curriculum. Any person who unlawfully possesses an alcoholic beverage can be summoned to court and, if a determination is made sustaining the charge, can be fined up to \$50, ordered to complete an alcohol awareness program and/or perform up to 30 hours of community service. In addition, if the police observe an under-aged person in possession of an alcoholic beverage, they are authorized to seize the alcohol and destroy it unless ordered not to do so by the Court.

Social Host Liability

Finally, in addition to any possible criminal liability that may be incurred because of under-aged drinking, the "**Social Host Law**," defined in **General Obligation Law § 11-100**, provides that a person who is injured by someone under the age of twenty-one who is intoxicated may sue for the resulting damages any person who knowingly provided or assisted in procuring the alcohol to the minor.

St. Lawrence County Office of the District Attorney

MINORS, ALCOHOL AND MOTOR VEHICLES

Vehicle and Traffic Law for Drivers

Since July 1, 2003, the threshold blood alcohol content (BAC) for *per se* Driving While Intoxicated is set at .08%. Under **Vehicle and Traffic Law § 1192** it is a MISDEMEANOR to operate a motor vehicle in an *intoxicated* condition, with a BAC of .08% or more, or while impaired by drugs, or a combination of drugs and alcohol. As of 2010, this same conduct was elevated to a FELONY if the intoxicated driver has one or more passengers who are 15 years of age or younger in the car at the time of operation. It is a traffic VIOLATION to operate a motor vehicle when *impaired* (BAC .07% or less) by alcohol. A first time misdemeanor DWI is punishable by a fine between \$500-\$2500, by imprisonment of up to one year or by both a fine and imprisonment, license revocation and the installation of a court ordered ignition interlock device on all vehicles in the household to which the convicted driver has access are also required. A first time felony DWI carries similar penalties though fines range from \$1,000 to \$5,000 and imprisonment for up to 4 years is authorized. A first time violation of DWAI is punishable by a fine between \$300-\$500, by imprisonment of up to fifteen days or by both a fine and imprisonment, as well as license suspension.

Aside from the criminal penalties that may be imposed, there are a number of administrative sanctions which pertain to drivers under the age of twenty-one. Under **Vehicle and Traffic Law § 1192-a**, named the “**Zero Tolerance Law**,” no person under the age of twenty-one may operate a motor vehicle after having consumed alcohol.

For the purpose of the “Zero Tolerance Law,” a person is deemed to have consumed alcohol if his or her BAC is between .02% and .07%. Any person who operates a motor vehicle in violation of this section who is not charged under one of the DWI-related sections will still be referred to the Department of Motor Vehicles for an administrative hearing and his or her license will be subject to a suspension or revocation for a period of six months for the first violation and for one year or until the person reaches the age of twenty-one (whichever is longer) for any subsequent violations. A civil penalty of \$125 will also be imposed. In addition, the license of any person under twenty-one who refuses to submit to a chemical test is subject to a suspension or revocation for the same periods of time, however, the civil penalty for refusing to submit to a chemical test is \$350.

Riding in Other Vehicles

Even if teenagers are not driving, there are other restrictions that may apply to their conduct while in a motor vehicle. **Vehicle and Traffic Law § 1227 (1)** prohibits the consumption of alcohol or the possession of an open container of alcoholic beverages by all occupants, passengers as well as drivers in most vehicles. The only exception is for passenger vehicles properly certified by the Public Service Commission or Interstate Commerce Commission. For the purposes of this section, a “passenger vehicle” is any vehicle, such as a limousine or bus, designed to carry ten or more passengers and used to carry passengers for profit or hire.

If a limousine or bus does not have the proper certifications or permits and the passengers are drinking alcoholic beverages, then both the driver and passengers can be charged under this section. Of course, if the limousine is in compliance with the statute, but the under-aged passengers are consuming alcohol, the passengers may be subject to the provisions of ABC Law § 65-c and the person providing the alcohol, whether the limo driver, or some other person, may be subject to prosecution for Unlawfully Dealing with a Child in the First Degree.

We hope you find this information useful and would like to thank you for your help in ensuring that our young people engage in safe celebrations.

