

GENERAL POLICY CONCERNED WITH YOUTH AND ALCOHOL

(Effective November 15, 1999)

GENERAL STATEMENT OF POLICY

It is the policy of the Wellesley Police Department to enforce the relevant statutory provisions concerned with youth and alcohol. A summary of more commonly violated statutes is attached. To accomplish this mission it is also the policy the Wellesley Police Department to have a duly qualified well trained and educated police force, respectful of every citizen's right to be dealt with fairly, respectfully and always from a perspective of protecting the safety of persons and property within the Town.

It is also the policy of this department to work closely with the community in explaining the laws and, where possible, partner with parents of teens. In furtherance of this aspect of the department's policy, the following general discussion is presented, for the use and understanding of Wellesley Police Officers as well as the citizenry of the town.

GENERAL DISCUSSION

1. Possession of alcohol, not involving any vehicle:

First Offense: When anyone under 21 years old is found to be carrying liquor upon his or her person, or is in possession of alcoholic beverages (the difference is explained below), and it is the youth's first offense of this kind, the preferred police response will be to seize the alcohol, notify the youth's parents, and summons the youth to Dedham District Court. The summons will be to the District Court if the youth is 17 years old or older, or to the Dedham Juvenile Court if the youth is under 17. It is to be understood, however, that the police officer has the authority to place the youth under arrest, or to place the youth into protective custody, where circumstances warrant. Being placed into protective custody carries with it no criminal penalties, since it is merely a recognized remedy for protecting an individual's safety when the police officer draws the conclusion that the person is so inebriated as to risk the person's personal safety.

Generally speaking, the offense of carrying liquor upon your person is exactly that, self explanatory; being in possession is defined in legal terms as having either dominion and control over an item, or physical control over it.

Second or subsequent offense: On a second or subsequent offense, the preferred response will be the seizure of the alcohol, notification of the youth's parents, and the youth's arrest and prosecution. The fact that this is beyond the first offense tips the balance in favor of more formal, immediate sanctions against the individual because of the apparent serious nature of the youth's conduct in violating these laws more than the initial time.

2. Transporting alcohol, with a vehicle involved:

When a youth is found to be transporting alcohol in a motor vehicle, the preferred response is arrest and prosecution. This included the driver and any passengers in the vehicle who are violating the law. A vehicle's involvement in an incident tips the equation into the more serious response of arrest and prosecution, and results in less officer discretion in managing the

circumstances. As for the driver, if the driver knows, or should have known, that liquor was in the vehicle, the driver will be arrested.

Passengers will be arrested if the officer reasonably finds that they knowingly have alcohol in their possession.

3. Other Types of Violations:

In addition to possession and transporting as above described, it is the policy of the Wellesley Wellesley Police Department to target three additional specific types of violators. These types are violations of:

- Youths who are flagrant or repeat offenders of alcoholic beverage laws.
- Youths who are transporting or providing alcohol to others
- Hosts of underage drinking parties

If a police officer encounters any of these types of violators, the preferred response will be arrest and prosecution.

FURTHER DISCUSSION, PARTICULARLY INCLUDING THE ROLE OF PARENTS

Another group of state laws governing the use and consumption of alcohol concerns not only the youth, but their parents. The following is a discussion of the more frequently found circumstances where these types of incidents occur. This policy, emphasizing also the role of parents, continues the 1995 policy in this respect.

4. Unsupervised party with alcohol, or individuals who have been consuming alcohol:

It is a real life experience, that parents should be guarded about leaving their homes in the care and custody of teenagers for extended periods of time. Even if the parents' own children are generally responsible, the fact of the matter is that other youth can be attracted to the premises, and an unsupervised party, including the use of alcohol , can be the result.

If the Wellesley Police Department is called, or it responds to a location where a home has been left to the supervision of a minor child, and there is a gathering in which alcohol is present, the preferred response of the Wellesley Police Department will be the arrest and prosecution of the host of the gathering, for violating the alcoholic beverages laws and bylaws, or other violations of the law.

Additionally, the Wellesley Police Department will attempt to identify the other participants of the party, and whether they are in possession, or carrying upon their person or whether they have been transporting alcoholic beverages. Further, officers will make an assessment of those present who have been consuming alcoholic beverages. The preferred response will be as set forth above under the heading, Possession of Alcohol, and include the notification of parents of the participants.

5. Serving alcohol to a minor by an adult other than the minor's parent or guardian:

An adult may not legally serve alcohol to a minor unless the adult is the parent or guardian of

that minor. Thus, if a planned event is to involve liquor to an underage youth, the host of the event should be aware this constitutes a criminal offense, which may be prosecuted upon complaint of the minor, his parent, the police or the district attorney. Needless to say, the risks to the host of such an event also include the prospect of civil sanctions.

A CHARGE IS NOT A CONVICTION

The role of the Wellesley Police Department is to protect the public safety, to enforce the laws, and charge violators. The role of the court is to decide whether the charge is proven, and if it is, what the remedy is. The remedy may be probation and then dismissal; or a conviction; or a not guilty; among other possible remedies. Fines and loss of license to operate a motor vehicle may also result.

GENERAL DISCUSSION CONCERNING A PARENT / POLICE / YOUTH PARTNERSHIP

This policy continues the 1995 policy that if parent (s) are called away from their home as a result of an unforeseen emergency, they are urged to contact the Wellesley Police Department and inform the Officer-in-Charge or the Office of the Chief of Police that they have been called away from their home as a result of an emergency and that their minor children will be staying at home or with a friend or relative.

In providing support and assistance to the parents and the family, the Wellesley Police Department will ensure that the officer (s) assigned to patrol their neighborhood will be notified of the conditions or circumstances established by the parents.

When calling, parents should provide the Wellesley Police Department with the following information:

1. Travel dates;
2. The destination;
3. Destination telephone number (s) where the parent (s) can be reached in an emergency;
4. A local adult contact person and their telephone number (s);
5. Who will be residing in their home during their absence, if anyone;
6. Who has been invited to their home during their absence, if anyone, (to include, cleaners, landscapers, etc); and
7. Number of vehicles that will be left in the driveway of the home, to include license plate numbers.

Parents should also notify an adult neighbor, friend (s), or relative (s), of their circumstances and ask that they also monitor and check their home and premises. Parents should make their children aware of the fact and that they have made this notification to the police and a neighbor, friend, or relative. The more people that are made aware of the situation, the less likely that a party and/or damage or harm will occur to either the youths or the property.

Finally, in those instances which the parents are not home, and the young person encounters people who want to utilize his/her house for an unsupervised party, the young person should

immediately contact the Wellesley Police Department and the adult neighbor, friend, or relative for assistance.

The Wellesley Police Department will attempt to identify the participants at the party, and whether they are in possession, are carrying upon their persons or whether they are or have been transporting alcoholic beverages. Additionally, officers will make an assessment of those people with whom they come into contact, to determine if they have been consuming alcoholic beverages. Officers will take appropriate action and record their findings within a Wellesley Police Department incident report. The parent (s) of the participants will also be notified. The Wellesley Police Department will also seize the alcohol present and submit it to the evidence/property officer for appropriate disposition.

COOPERATION BETWEEN THE WELLESLEY POLICE DEPARTMENT AND WELLESLEY SCHOOL OFFICIALS

Consistent with the requirements and intent of the Safe Schools Act and the mutual responsibilities of the Wellesley Police Department and the various public and private secondary schools, the Wellesley Police Department will work in a cooperative and collaborative manner with school officials (both public and private) and will provide information to school officials in accordance with the Massachusetts General Laws, including but not limited to those concerned with safe schools, the release of public information and the release of information for the public safety.

Social Host Law:

MGL Chapter 138, section 34: Delivery of Alcohol Beverages to Person Under 21 (as amended by Chapter 175 of the Acts of 2000)

Prior to the 2000 amendment, MGL 138, section 34 made it unlawful for a person to “procure an alcoholic beverage for a person under twenty-one years of age.” The new statute uses the word “furnish” instead of procure, and defines “furnish” as to:

*“**Knowingly or intentionally supply, give or provide to or allow a person under 21 years of age except for the children and grandchildren of the person being charged to possess alcoholic beverages on the premises or property owned or controlled by the person charged.**”*

The essential addition to the statute are the words in bold above. Before the amendment, the commonwealth had to prove that the defendant actually provided the alcohol. Now, a person may be charged if he or she allows a person who is under 21 to possess alcohol while on property owned or controlled by him. The statute was passed to address the issue of teenage alcohol parties being held with the full knowledge of parents.

Although the focus of the change may have been the irresponsible behavior of some parents, it is clear that the statute may also be used to charge minors who host alcohol parties. In other words, if a minor is left in charge of the home while his parents are away, then *he* is in control of the

property. If he allows friends who are under 21 to bring alcohol to the home, he should be charged under this statute.

Penalty

Before the amendment, the offense was punishable by a fine or \$ 2,000 or imprisonment for six months. The amendment increases the length of potential incarceration to one year. The maximum fine remains at \$ 2,000.

Impact on Driver's License

Section 34 has no provision addressing Registry action on the defendant's license. Therefore, no citation should be issued if this is the only charge brought. In the case of a minor charged under this section *and* under 34C, a citation should be issued for the 34C violation only.

Impact on the Wellesley Police Department's Youth Alcohol Policy

The new amendment is consistent with the department's Youth Alcohol Policy. Section Three of the policy directs that officers target youths that host underage drinking parties, and that the preferred response in dealing with such youths is arrest. Thus, youths that are arrested for possession of alcohol (section 34C) because they are hosting a party should also be charged with violating section 34.

Section Five of the policy indicates that adults who host underage alcohol parties should be charged. As stated above, the recent amendment to section 34 allows an adult to be summonsed if they allowed people under 21 to possess alcohol on their property.

Effective Date

This law was signed on August 4, 2000 with an emergency preamble. Therefore, it went into effect on that date.

Chapter 138: Section 34. Sale, delivery or furnishing alcoholic beverages to persons under twenty-one years of age; employment of persons under eighteen years of age

Section 34. No person shall receive a license or permit under this chapter who is under 21 years of age. Whoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever, being a patron of an establishment licensed under section 12 or 15, delivers or procures to be delivered in any public room or area of such establishment if licensed under section 12, 15, 19B, 19C or 19D or in any area of such establishment if licensed under said section 15, 19B, 19C or 19D any such beverages or alcohol to or for use by a person who he knows or has reason to

believe is under 21 years of age or whoever procures any such beverage or alcohol for a person under 21 years of age in any establishment licensed under section 12 or procures any such beverage or alcohol for a person under 21 years of age who is not his child, ward or spouse in any establishment licensed under said section 15, 19B, 19C or 19D or whoever furnishes any such beverage or alcohol for a person under 21 years of age shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both. For the purpose of this section the word "furnish" shall mean to knowingly or intentionally supply, give, or provide to or allow a person under 21 years of age except for the children and grandchildren of the person being charged to possess alcoholic beverages on premises or property owned or controlled by the person charged. Nothing in this section shall be construed to prohibit any person licensed under this chapter from employing any person 18 years of age or older for the direct handling or selling of alcoholic beverages or alcohol.

Notwithstanding the provisions of clause (14) of section 62 of chapter 149, a licensee under this chapter may employ a person under the age of 18 who does not directly handle, sell, mix or serve alcohol or alcoholic beverages.

Chapter 138: Section 34A. Persons under twenty-one years; purchase or attempt to purchase alcoholic beverages

Section 34A. Any person under twenty-one years of age who purchases or attempts to purchase alcoholic beverages or alcohol, or makes arrangements with any person to purchase or in any way procure such beverages, or who willfully misrepresents his age, or in any way alters, defaces or otherwise falsifies his identification offered as proof of age, with the intent of purchasing alcoholic beverages, either for his own use or for the use of any other person shall be punished by a fine of three hundred dollars and whoever knowingly makes a false statement as to the age of a person who is under twenty-one years of age in order to procure a sale or delivery of such beverages or alcohol to such person under twenty-one years of age, either for the use of the person under twenty-one years of age or for the use of some other person, and whoever induces a person under twenty-one years of age to make a false statement as to his age in order to procure a sale or delivery of such beverages or alcohol to such person under twenty-one years of age, shall be punished by a fine of three hundred dollars. A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court. Upon receipt of such notice the registrar shall thereupon suspend for 180 days the defendant's license or right to operate a motor vehicle.

The commission shall prepare and distribute to business establishments which sell, serve or otherwise dispense alcohol or alcoholic beverages to the general public, posters to be displayed therein in a conspicuous place. Said posters shall contain a summary and explanation of this section.

Chapter 138: Section 34B. Liquor purchase identification cards

Section 34B. Any person who shall have attained age twenty-one and does not hold a valid operator's license issued by the registry of motor vehicles, pursuant to section eight of chapter ninety, may apply for a liquor purchase identification card. Such cards shall be valid for five years and shall be issued by the registry of motor vehicles pursuant to regulations prescribed by the registrar with the advice of the commission and shall bear the name, signature, date of birth,

address and photograph of such person. The registry of motor vehicles shall require payment of a twenty-five dollar fee for any card issued pursuant to this section.

Any licensee, or agent or employee thereof, under this chapter who reasonably relies on such a liquor purchase identification card or motor vehicle license issued pursuant to section eight of chapter ninety, or on a valid passport issued by the United States government, or by the government, recognized by the United States government, of a foreign country, or a valid United States issued military identification card, for proof of a person's identity and age shall not suffer any modification, suspension, revocation or cancellation of such license, nor shall he suffer any criminal liability, for delivering or selling alcohol or alcoholic beverages to a person under twenty-one years of age. Any licensee, or agent or employee thereof, under this chapter, who reasonably relies on such a liquor purchase identification card or motor vehicle license issued pursuant to said section eight, for proof of a person's identity and age shall be presumed to have exercised due care in making such delivery or sale of alcohol or alcoholic beverages to a person under twenty-one years of age. Such presumption shall be rebuttable; provided, however, that nothing contained herein shall affect the applicability of section sixty-nine.

Any person in a licensed premises shall, upon request of an agent of the commission or the local licensing authorities, state his name, age, and address. Whoever, upon such request, refuses to state his name, age or address, or states a false name, age, or address, including a name or address which is not his name or address in ordinary use, shall be guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars.

Any person who transfers, alters or defaces any such card or license, or who makes, uses, carries, sells or distributes a false identification card or license, or uses the identification card or motor vehicle license of another, or furnishes false information in obtaining such card or license, shall be guilty of a misdemeanor and shall be punished by a fine of not more than two hundred dollars or by imprisonment for not more than three months.

Any person who is discovered by a police officer or special police officer in the act of violating the provisions of this section may be arrested without a warrant by such police officer or special police officer and held in custody, in jail or otherwise, until a complaint is made against him for such offense, which complaint shall be made as soon as practicable and in any case within twenty-four hours, Sundays and legal holidays excepted.

Chapter 138: Section 34C. Minors; operation of motor vehicle containing alcoholic beverage; suspension of driver's license

Section 34C. Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses, transports or carries on his person, any alcohol or alcoholic beverages, shall be punished by a fine of not more than fifty dollars for the first offense and not more than one hundred and fifty dollars for a second or subsequent offense; provided, however, that this section shall not apply to a person between the ages of eighteen and twenty-one who knowingly possesses, transports or carries on his person, alcohol or alcoholic beverages in the course of his employment. A police officer may arrest without a warrant any person who violates this section. A conviction of a violation of this section shall be reported forthwith to the registrar

of motor vehicles by the court, and said registrar shall thereupon suspend for a period of ninety days the license of such person to operate a motor vehicle.