

Underage Under the Influence Ordinances in Wisconsin

Overview

Underage drinking and providing alcohol to underage youth is illegal in Wisconsin, but a gap in Wisconsin law hampered effective enforcement of these underage drinking laws. In Wisconsin, police discovering intoxicated youth without evidence of consumption (bottles, cans, etc.) were often unwilling to write a citation if the youth maintained the alcohol was consumed elsewhere or with a parent. Law enforcement cannot issue a citation for an offense occurring outside their jurisdiction and it is not illegal to be simultaneously underage and under the influence of alcohol. A parent or legal-aged spouse can provide alcohol to youth legally and officers from another jurisdiction (where the alcohol was allegedly consumed) are unlikely to travel for the purpose of writing a citation. Once youth realized they could avoid a citation by claiming the alcohol was consumed elsewhere, word spread quickly in southeastern Wisconsin.

Nine states, but not Wisconsin, have adopted laws banning “internal possession” of alcohol by individuals below the minimum legal drinking age of 21, two Wisconsin municipalities identified *underage under the influence* ordinances as an effective alternative approach.ⁱ

The Village of Pleasant Prairie and the City of Kenosha responded by adopting similar ordinances banning underage youth from being intoxicated in public. The ordinances work cooperatively offering a workable solution allowing communities to enforce the spirit and letter of the law. As the first two municipalities to adopt *underage and under the influence* ordinances, they offer lessons for law enforcement and municipal leaders who may face similar problems.

Legislative Intent

Neither community expressed the intent behind this proposal, which falls within the police powers of Wisconsin municipalities.

Definitions

Underage

Both ordinances refer to the definition found in Wis. Stat. §125.02(20m)(2009-2010):

“‘underage person’ mean a person who has not attained the legal drinking age”

Under the Influence

The different definitions are the primary difference between the ordinances.

Kenosha

“For the purpose of this section ‘under the influence’ shall mean any underage person who exhibits one or more of the following indicators:

- (a) odor of intoxicants on the breath
- (b) bloodshot eyes
- (d) unstable balance
- (e) slurred speech
- (f) failure of Standard Field Sobriety Test
- (g) admission to consumption of alcohol”

Pleasant Prairie

“(2) For the purposes of this section ‘under the influence’ shall mean any detectable amount of alcohol in the underage person's blood or breath.”

Analysis

Pleasant Prairie offers a broader definition but requires that some measurement confirming presence of alcohol in the breath or blood. The more detailed standard adopted by Kenosha includes several observational standards, including the individual’s appearance, behavior and admission. Even with an admission, it appears some measurement of blood alcohol must be collected for a citation to be issued in Pleasant Prairie.

The Kenosha reference to the “Standard Field Sobriety Test” may be somewhat misleading. In impaired driving or OWI incidents, officers use the Standardized Field Sobriety Test (SFST) Battery, which refers to the Horizontal Gaze Nystagmus (HGN), Walk-and-Turn (WAT), and One-Leg Stand (OLS). These three tests are administered and evaluated in a standardized manner to obtain validated indicators of impairment based on NHTSA research. In contrast, the Kenosha ordinance does not define or enumerate the specific test or tests to be administered. Kenosha has not experienced any difficulty enforcing this ordinance as a result of the ambiguity. Because an *underage under the influence* citation doesn’t require impairment, just consumption, the Kenosha Police rarely administer the entire battery of tests before issuing an underage under the influence citation.ⁱⁱ

The Kenosha ordinance only requires one of the enumerated factors to be present for a citation to be issued.

Prohibited Behavior

Village of Pleasant Prairie

“No underage person as defined in §125.02(20m), Wis. Stats., shall be under the influence of alcohol in the Village of Pleasant Prairie. Such prohibition is subject to the exceptions in §125.07(4)(b), Wis. Stats. “

City of Kenosha

“No underage person as defined in Section 125.02(20m), Wisconsin Statutes, shall be under the influence of alcohol in the City of Kenosha. Such prohibition is subject to the exceptions in Section 125.07(4)(b), Wisconsin Statutes.”

Analysis

The identical language is clear; both reference §125.074) (b) which allows alcohol to be provided to a youth by a parent, guardian or spouse who has reached the minimum legal drinking age. However, the courts have interpreted that law to require the parent, guardian or spouse to supervise the underage drinker. As a result, an unescorted intoxicated youth in public may receive a citation for violating this ordinance. Ordinance violations are not crimes and are resolved by a forfeiture or other penalty imposed by municipal court.

Adopting and then enforcing this ordinance allows the community to sanction youth who are engaging in unacceptable behavior regardless of where youth contend they drank or whether or not a parent or guardian legally provided the alcohol.

Penalties

In Kenosha, this penalty carries a \$114.00 forfeiture. Citations are dismissed if the youth attends an 8 hour alcohol education class. Of the 107 youth receiving citations in 2011, 19 attended the class while 88 youth paid the forfeiture. Another 21 citations were issued from January-May 2012, of those, 17 paid the forfeiture and four attended the alcohol education class.

In Pleasant Prairie, a first offense carries a forfeiture of \$172.00, with dismissal possible if the youth completes the same alcohol education class offered in Kenosha. Pleasant Prairie does not maintain separate statistics on these citations, but reported 79 citations for underage drinking in 2011, with just 4 dismissed upon completion of the program. From January through May 2012, 32 citations for underage drinking were issued with three youth having their citations dismissed upon completion of the alcohol education program.

Conclusion

Wisconsin's underage drinking problem has eased slightly recently, perhaps as a result of increased community awareness of the dangers of underage drinking, community based efforts including social host ordinances, alcohol age compliance checks and a wide spread "Parents Who Host Lose the Most: Don't be a Party to Teenage Drinking" campaign.

The *underage under the influence ordinance* fills a specific gap in state law allowing more rigorous enforcement of existing bans against underage drinking. It may also prove to be an effective tool at outdoor events and festivals where alcohol is frequently available outside the controls of a licensed establishment. It provides a clear indication that underage drinking is unacceptable within the community and will be sanctioned.

ⁱ Alcohol Policy Information System, accessed June 14, 2012

http://www.alcoholpolicy.niaaa.nih.gov/Underage_Possession_Consumption_Internal_Possession_of_Alcohol.htm

The states with internal possession laws are Colorado, New Hampshire, Michigan, Wyoming, Utah, Kansas, North Carolina, South Carolina and, Missouri.

ⁱⁱ Letter from Lt, Brad Kemen, Public Information Officer, Kenosha Police Department to Julia Sherman, Wisconsin Alcohol Policy Project. June 12, 2012.