




Limiting Access to Age Restricted Products: Implementing Effective Compliance Check Investigations

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**Legal Disclaimer**

- This program contains references to statutes, case law and related materials.
- This program does not create a legal relationship between the Cabin Village LLC, the State of North Dakota or any of today's presenters.
- This program does not constitute legal advice and does not establish an attorney-client relationship.
- Consult with your legal advisor to answer your questions and to obtain legal advice.

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**Session Objectives**

- You will learn:
  - Overview of National and State Alcohol & Tobacco Statistics.
  - What constitutes a "compliance check".
  - The benefits of a robust "compliance check" program.
  - The legal foundation that allows compliance checks to be conducted.
  - Step-by-step standards for conducting compliance checks and examples of "Best Practice" policies to ensure consistency in performance.

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## North Dakota Alcohol Facts

- 27.6% of North Dakota high school students report that they are current drinkers and 15.6% of those drinkers also reported binge drinking (1).
- 12.9 % of North Dakota Youth report that they had their first alcoholic drink before the age of 13 (2).
- 11.5% of juvenile arrests in North Dakota are alcohol related (3).



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## Consequences of Underage Drinking

- Youth who drink before the age of 15 are 4 times more likely to experience an alcohol use disorder than those that wait till age 21. Common consequences associated with underage drinking (4).
  - Sexual Assault.
  - Physical Assault.
  - Multi-Drug/Substance Misuse.
  - Sexually Transmitted Diseases.
  - Academic Failure.
  - Drunk Driving.
  - Suicide.
  - Death.

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## Alcohol: Underage Drinking



Source: Pacific Institute of Research and Evaluation (PIRE) 2013

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National Tobacco Facts

- Over 90% of adult smokers began smoking in their teens or earlier.
- Each day approximately 1,900 youth under 18 smoke their first cigarette.
- 5.7% of high school students are current smokers by the time they leave high school (5).

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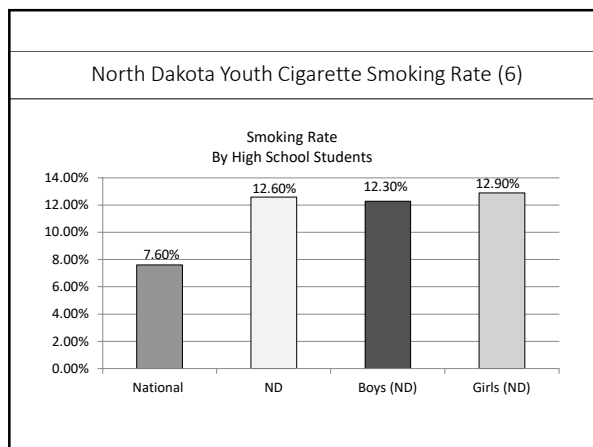
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North Dakota Tobacco Facts

- In North Dakota, 200 kids under 18 become new daily smokers each year (7).
- 34.5% of North Dakota high school smokers report they smoked their first cigarette before the age of 13 (8).
- In 2019 35.5% of North Dakota high school youth reported currently using some tobacco product, including e-cigarettes on at least one day within the past 30 days (9).
- In 2019 33.1% of North Dakota youth in grades 9-12 reported that they has used e-cigarettes on at least one day in the past 30 days (10).

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Why Be Concerned?

- Smoking costs the state of North Dakota \$326 million in annual direct health care costs.
- Approximately 14,000 North Dakota youth are projected to die prematurely due to smoking (11).



Image Courtesy of Nancy McGee

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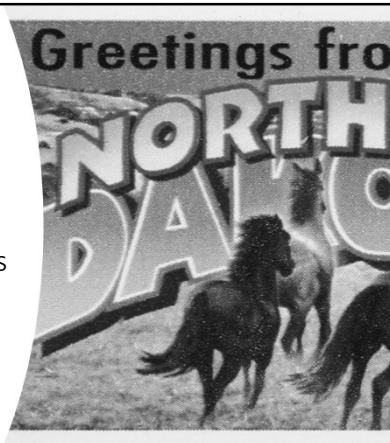
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Compliance Check Investigations



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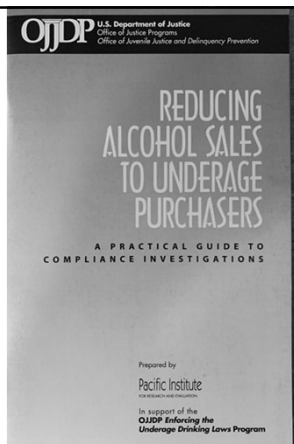
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Resource Guide  
(Included in Materials)



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## What are Compliance Check Investigations?

- Compliance check investigations are a cost-effective way to control youth access to tobacco and alcohol from retail outlets. They involve the use of underage buyers by law enforcement agencies as "decoys" to test retailers' compliance with laws regarding the sale of tobacco and alcohol to minors.
- State laws vary on the operational components of the program.

PIRE, 1999

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## Compliance Checks

- Compliance Checks are considered the foundation of any effective alcohol or tobacco enforcement program.
- They should be used in conjunction with a broad-based education and enforcement initiative.

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## Compliance Checks

Often referred to as a "Sting"

They are not . . .

- We are not out to get businesses.
- We simply want responsible community partners who are compliant with the law.



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## Why are Compliance Check Operations Necessary

- Three ways youth obtain alcohol;
  - Steal it,
  - Given or purchased for them by an adult,
  - They are able to purchase it themselves,
    - Retailers.
    - Use of fake ID.
- Strategies that attack each of these areas are necessary to impact the problem. Compliance checks address the third way youth obtain alcohol by purchasing it themselves from a retail location.

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## Why are Compliance Check Investigations Important?

- Many underage individuals self-report that they purchase at locations which don't even bother to ask for identification.
- Still more young people report showing clerks their real identification with a true and accurate date of birth that shows them to be under 21 and the clerk still sells them alcohol because the clerk failed to calculate the purchaser's age correctly.

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## Why are Compliance Check Investigations Important?

- In North Dakota 13.2% of 9<sup>th</sup>-12<sup>th</sup> graders who smoke reported they usually purchased their own cigarettes from a retail store and 4.9% reported they purchase their own "vape" products (12).

Image Courtesy Nancy McGee

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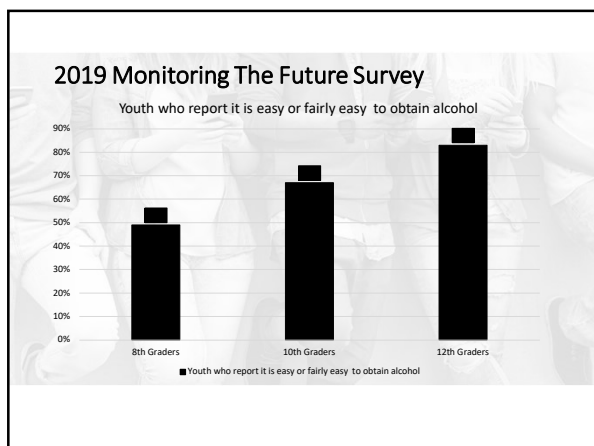
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### Why Do Compliance Check Investigations?

- Compliance checks send a message to your community that law enforcement cares about responsible and lawful sales of age restricted products.
- Compliance Checks allow an agency to assess the level of underage availability in the community.

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### Why Do Compliance Check Investigations?

- Numerous studies validate that conducting regular compliance check investigations reduces the availability of alcohol to underage youth.
  - In Concord, New Hampshire sales to youth decreased from 28% to 10% after quarterly compliance checks (coupled with increased penalties and a media campaign) at 539 off-premise alcohol establishments.

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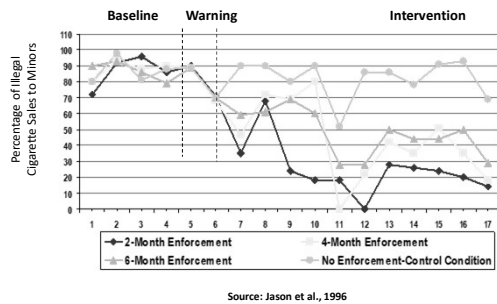
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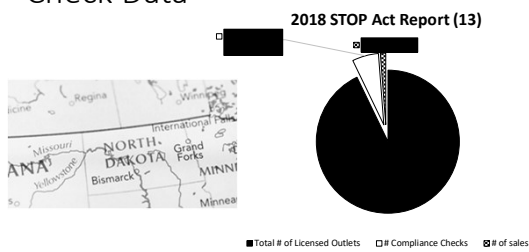
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## Effectiveness of Enforcement



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## North Dakota Alcohol Compliance Check Data



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## North Dakota Alcohol Compliance Check Data

A compliance check operation in Williston, ND in 2019 resulted in approximately 25% of the businesses selling alcohol to an underage youth (14).

25%



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## Need for Active Enforcement

- Some early research suggests that tobacco retailers will not comply with minimum legal age laws in the absence of active enforcement.
- Active enforcement of youth access restrictions using compliance checks paired with penalties for violations are effective at increasing retailer compliance with youth access laws.

### Resource:

*Committee on the Public Health Implications of Raising the Minimum Age for Purchasing Tobacco Products; Board on Population Health and Public Health Practice; Institute of Medicine; Bonnie RL, Stratton K. Kwan LY Editors . Washington (DC): National Academies Press (US); 2015 Jul 23).*

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## BENEFITS



### Benefits of Compliance Check Investigation Programs

- Publicizing the results of compliance check investigations raises community awareness and helps to change or reinforce community norms about youth alcohol and tobacco use.
- Continued investigations can be used to monitor progress and provide support for continued checks.

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## Benefits of Active Enforcement

- The threat of compliance checks can have a general deterrent effect.
- In addition, prior checks increases future compliance, particularly among those that have been sanctioned in the past.
- Compliance checks also increase retailer compliance with other tobacco control measures such as posting of warning signs, and adherence to other point-of-sale marketing and advertising restrictions.
  - See Resource - Committee on the Public Health Implications of Raising the Minimum Age for Purchasing Tobacco Products; Board on Population Health and Public Health Practice; Institute of Medicine; Bonnie RL, Stratton K. Kwan LY Editors . Washington (DC): National Academies Press (US); 2015 Jul 23.

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## Benefits of Active Enforcement

- The likelihood of establishment selling alcohol to underage youth decreases after they have been checked by law enforcement, but these effects quickly decay over time.
- Establishments that had a close neighbor (within 125 m) checked in the past 90 days were also less likely to sell alcohol to young-appearing buyers (15)

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## Legal Basis for Compliance Checks

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## North Dakota Law – Tobacco Compliance Checks

- Allows for use of underage buyers to verify compliance with tobacco laws.
  - ND 12.1-31-03(2).
- Must obtain permission form the parent or legal guardian.
- Must be supervised by law enforcement agency.
  - Exception – A State Agency, city , county, board of health, tobacco retailer or association of tobacco retailers may also conduct compliance checks after coordinating with the appropriate local law enforcement authority.

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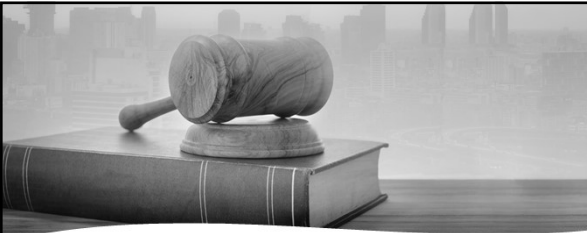
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**City Of Bismarck v. DePriest**

- North Dakota Supreme Court Case in 2006 affirmed that Law Enforcement can utilize underage youth to test compliance with state alcoholic beverage laws.
- Court indicated that the legislature authorized such checks via the passage of N.D.C.C. 12.1-05-02(4). Execution of Public Duty.
- Court cited Roberts v. Illinois Liquor Control Commission.

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N.D.C.C. 12.1-05-02.(4)  
Execution of public duty.

• **Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified** unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer alone could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.

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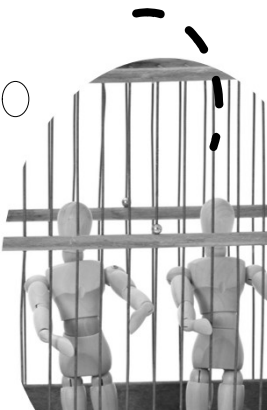
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**Entrapment Defense**

- Sorrells v United States 287 U.S. 435 (1932).
  - A prohibition era case out of North Carolina. The Government Agent pleaded several times for Sorrell's to sell him whiskey and Sorrell's finally acquiesced.
    - Attempted to build a bond with WW1 veteran.
  - Supreme Court held it was entrapment for a police decoy to "plead with and urge" a person to sell him whiskey where there was no indication the target was predisposed to make an illegal sale.



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# Entrapment Defense

- To raise an entrapment defense, the defendant must present evidence that he was:
  - (1) Induced to commit the crime by a government agent; and
  - (2) not otherwise predisposed to commit the crime. *Matthews v United States*, 485 U.S. 58, 62-63 (1988).
- The "mere solicitation, or the creation of an opportunity to engage in criminal conduct, alone is not sufficient enough to establish inducement". *United States v Pratt*, 913 F.2d 982-989 (1st Cir. 1990)

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# Entrapment Defense

## Elements of Entrapment:

Entice	Plead with	Coerce	or otherwise compel
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Note your conduct as well as the youth buyers conduct will be looked at as part of the Court's analysis.

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# N.D.C.C. 12.1-05-11 Entrapment

- It is an affirmative defense that the defendant was entrapped into committing the offense.
- A law enforcement agent perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, the law enforcement agent induces or encourages and, as a direct result, causes another person to engage in conduct constituting such a crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.
- In this section "law enforcement agent" includes personnel of federal and local law enforcement agencies as well as state agencies, and any person cooperating with such an agency.

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ROBERTS v. I.L.C.C.  
IL Appellate 1st District 1965

- “Where nothing more than a simple request to make unlawful sale of liquor appears, the fact that the solicitation was by a decoy pursuant to police instructions does not make the defense of entrapment available, and it is immaterial that police supplied money for the illegal purchase.”



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Enforcement  
Goal

- The overall goal of conducting compliance checks is to achieve voluntary compliance from the merchants.
- This can be achieved by conducting regularly scheduled compliance checks and furthered with Merchant Education Programs.

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Key Steps in Preparing  
for Compliance Check  
Investigations

- Work with community leaders.
- Work with prosecutors, courts and regulatory agencies.
- Work with industry/retailers.
- Selection of youth buyers.
  - Training of youth buyers.
  - Documentation of youth buyers.
- Selection of locations.
- Procedures/Protocols for conducting investigations.
- Data collection.
- Work with the media.



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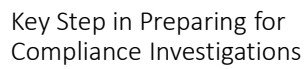
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Key Step in Preparing for Compliance Investigations

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graph TD; A[Work] --> B[Identify]; B --> C[Bring];
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**Work** Work with prosecutors, courts and regulatory agencies.


**Identify** Identify every agency that could be involved.

**Bring** Bring them to the table.

- Shared resources.
- Shared expectations.



# Regulation



- Both law enforcement and non-law enforcement groups need a thorough understanding of state law and/or local ordinances before beginning compliance checks.
- This must be communicated to ensure a consistent expectation of outcomes and role identification.

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## How Can Courts & Regulatory Agencies Be Involved?

- Alcohol & Tobacco laws are often complex and hard to understand so it is critical that you have a strong understanding of any limitations imposed by statute, ordinance, or by the administrative rules of the licensing authority as you plan your compliance checks.
  - For example there is a great deal of overlap as there are potentially 4 regulatory schemes involved in tobacco sales:
    - FDA,
    - Synar,
    - State Statute,
    - Local ordinance.
- Training is essential.

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## How Can Courts & Regulatory Agencies Be Involved?

- Judicial partners such as the Attorney General, DA's, prosecutors, judges, etc., can provide legal perspectives for operations.
  - Establish evidentiary requirements.
  - Operational issues discussed ahead of time. Voice concerns both ways and determine:
    - Agreed upon procedures,
    - Expected number of cases,
    - Prosecution strategy,
      - Fines, Community Service, Smoking Cessation Programs.
- Keep them in the loop and do evaluations after checks are completed.
- Courts can provide conviction rates and penalties assessed for adjudicated cases.

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## How Can Courts & Regulatory Agencies Be Involved?

- Regulatory agencies can provide information about requirements from their agencies that may impact operations and prevent or allow an administrative case to succeed.
  - Develop agreed upon procedures.
- Regulatory agencies can provide data on compliance rates.

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**Key Step in Preparing for Compliance Investigations**

- Working with Industry/Retailers.
  - Most retailers do NOT want to sell to youth.
  - Involve them as part of your overall strategy development.
  - Search for awareness strategies that involve retailers. Often, they are willing partners.

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**Share Your Data With Merchants**

- You might consider approaching the merchant's association or other business association with the data to express your concerns.
- Coalition groups may be able to help with this step.
  - The North Dakota Youth Risk Behavioral Survey (YRBS) has useful data on youth alcohol & tobacco usage and ease of availability.
  - In addition, your State "Synar" Report and the FDA –CTP Website have additional data on youth tobacco products consumption and availability (16).

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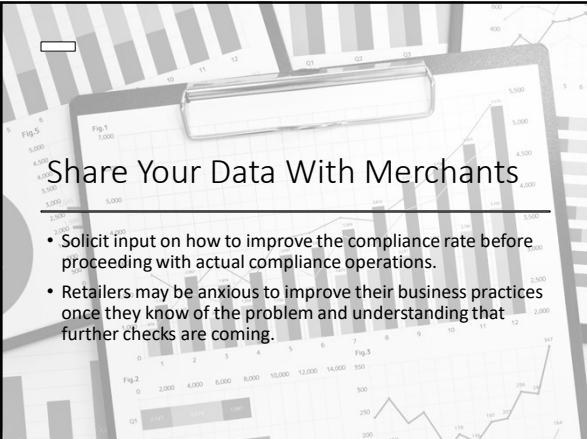
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**Share Your Data With Merchants**

- Solicit input on how to improve the compliance rate before proceeding with actual compliance operations.
- Retailers may be anxious to improve their business practices once they know of the problem and understanding that further checks are coming.

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### Working With Industry/Retailers

- Educate retailers about their responsibility and potential consequences of sales to minors.
  - Point of Sale Software/Programs
- Provide printed materials such as calendars and information on recognizing false IDs.
  - The FDA-CTP has free materials available for retailers on their website.
  - Many community coalitions have free printed materials as well.
  - Avoid using alcohol & tobacco industry materials as they often convey mixed messaging.

Photos Courtesy of Nancy McGee

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### Working With Industry/Retailers

- Widely publicize that enforcement operations are about to occur.
  - Enforces the deterrent effect and speaks to the overall fairness of the program.
- Consider providing rewards and recognition to retailers that comply. Community Coalitions can help with this.
  - Congratulatory letters.
  - T-shirts.
  - Buttons.
  - Gift Cards.

Photo Courtesy Nancy McGee

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### Key Step in Preparing for Compliance Investigations

#### Selection of Youth Buyers...

- The success of your actual operation depends on the performance of your youth buyers. The way you select, screen, and train these individuals is crucial.
- Image and background of your youth buyers will be scrutinized.

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## Sources for Recruiting Underage Youth Buyers

- Best Options:
  - Community coalitions and faith groups.
  - Youth groups such as MADD and SADD.
  - Family members and friends of officers.
  - Referral from youth already involved in the program.
  - Department employees who are under the legal age of purchase.
  - Military volunteers who are under the legal age of purchase.
- Riskier Options:
  - Newspaper advertisements.

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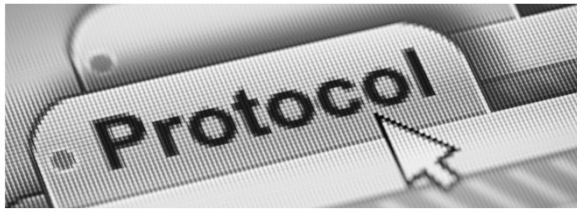
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## Selecting Underage Youth Buyers

- According to ND Chapter 29-29.5 (Confidential Informants) your underage buyer cannot be working off any criminal charges.
  - Draft specific protocols with the assistance of the AG's Office or your local prosecutor's office.
- Always ask the prospective buyer if they have ever purchased or attempted to purchase alcohol & tobacco products. Their previous inclination to purchase or use these products will likely be raised as a possible defense.



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## Age of Buyers Alcohol

18 – 19 Years of age is ideal.



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Age them out on their 20<sup>th</sup> birthday

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### Selection of Youth Buyers

- Age of Youth Buyers
  - For tobacco enforcement 15 to 17 years of age is ideal.
    - Age them out on their 17<sup>th</sup> birthdate.
- Note - If your community has a 21 purchase age for tobacco or you are enforcing the Federal Tobacco Control Act you may wish to verify compliance with the increased age of purchase using older youth between 18-20 years of age, however testing of these requirements may need to be done using funding sources other than your grant given the current State law only prohibits the sale to anyone under 18. Make sure to verify your options with your funding source, your city attorney and/or the North Dakota Attorney General's Office.

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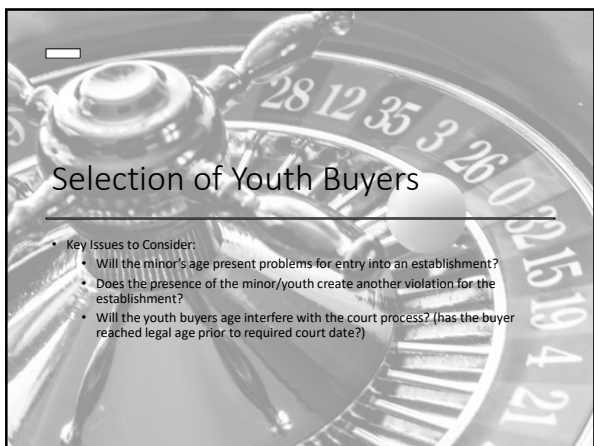
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### Selection of Youth Buyers

- Key Issues to Consider:
  - Will the minor's age present problems for entry into an establishment?
  - Does the presence of the minor/youth create another violation for the establishment?
  - Will the youth buyers age interfere with the court process? (has the buyer reached legal age prior to required court date?)

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Age Verification/Age Assessment

- Select underage buyers based upon youthful appearance.
- Use age testing to make sure that the underage buyers look underage.
  - This is an essential part of ensuring that your operation was fairly conducted.
- Retailers may suggest that the buyer looked older than the legal purchase age and that is why their employee didn't ask for identification.

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KOTA AGE VERIFICATION TESTING FORM

Date of Test	
Youth CI #	
Youth Actual Age	
Agency Name	
Location of Test	

Number	Age Estimate in Years
01	
02	
03	
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Age Verification/Age Assessment Methods

- One method is to take your potential buyer to a heavily traveled area such as a mall and ask 10 random people how old they think your volunteer is and calculate a perceived age based upon their responses. If these ten random people think your buyer looks too old you should not use them.
- Document this!



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Age Verification/Age Assessment Methods

- Another method is to have an independent panel made up of responsible citizens assess the appearance of the underage buyer before they are used in compliance checks.

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graph TD; A[Your AAG can be made up of community leaders, educators, and licensees.] --> B[The group will observe potential buyers and provide an opinion that they, as objectively reasonable people, believe the buyer appears under the age of legal purchase and someone whose age should be checked before buying an age restricted product.]
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Using an Age Assessment Group(AAG)

Your AAG can be made up of community leaders, educators, and licensees.

The group will observe potential buyers and provide an opinion that they, as objectively reasonable people, believe the buyer appears under the age of legal purchase and someone whose age should be checked before buying an age restricted product.

The group will observe potential buyers and provide an opinion that they, as objectively reasonable people, believe the buyer appears under the age of legal purchase and someone whose age should be checked before buying an age restricted product.

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# Benefits of an Age Assessment Group

- The AAG panel can provide a written assessment for your records.
- This type of proactive approach engages the community leaders and confirms to demonstrate that your compliance check process is both reasonable and fair.

A grid of 20 black and white portrait photographs of diverse individuals of various ages, representing the community leaders involved in an Age Assessment Group. The portraits are arranged in a 4x5 grid, with some individuals having their photos partially obscured by overlapping circles on the right side. The individuals shown include men and women of different ethnicities and ages, from young adults to older adults.

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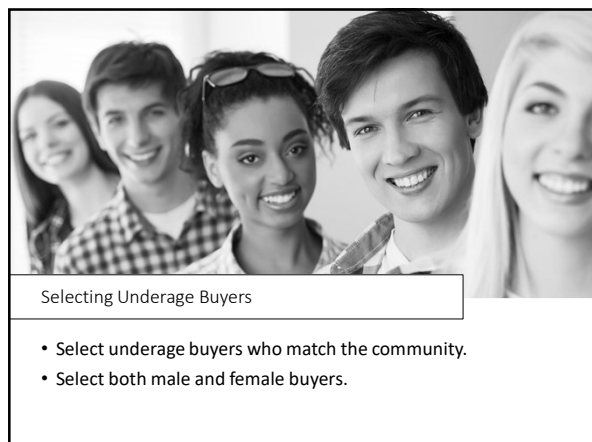
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## Selecting Underage Buyers

- Instruct buyers not to dress in ways that make them appear older.
  - Clothing matters – Buyers should blend in and not stand out.
  - No facial hair for males.
  - No make up for females.
  - Ball Caps & sunglasses should be avoided.
- Use buyers in areas where they are not known.

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## Key Step in Preparing for Compliance Investigations

- Train Underage Buyers.
  - The best youth buyers are ones that know what is expected and follow your direction.

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## Training Underage Buyers

- Provide specific instructions on how the youth buyer is to act, what they are to say etc.
- This falls under local control and should be discussed with your prosecutor and those that will adjudicate the cases.
  - ID vs. No ID – Never use a fake ID
  - Truth vs. Lying.
    - “Best Practices” recommends that you instruct the youth buyers to answer questions truthfully and provide photo identification when asked.
  - Should not be allowed to do anything to encourage the sale.
  - Remember the discussion regarding Entrapment Defense.

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Training Underage Buyers

- Instruct on what they should purchase.
  - Brand of Alcohol.
- Type of tobacco product.
  - Instruct on specific brands, but do not be too formulaary.
  - Longs/ Shorts, menthol, soft pack – hard pack.
- Items with the tobacco.
  - Lighters, wrapping papers ???

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Training Youth Buyers

- Review exit signals / safety procedures.
  - Instruct them to avoid situations that seem dangerous and not to buy if people in the outlet know them.
- Ability to identify the clerk.
  - Physical Description.
  - Name Tags.



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Training Underage Buyers-Interactive Preparation

- For some youth this may be their first time doing something as bold as trying to buy cigarettes.
- Extreme nervousness can impair their ability to remember or follow your directions.
  - To help them get over their fears or concerns it is a good idea to give your buyers some interactive experience by “practice buying” in a safe non-licensed environment. This type of training can calm nervous youth and give them some confidence that they can perform this role effectively.

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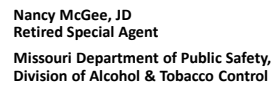
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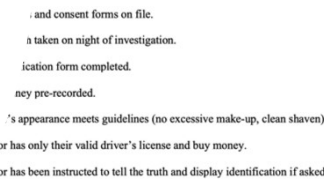
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<p>Youth Buyer/Decoy Issues</p>	<ul style="list-style-type: none"> <li>• <b>Compensation.</b> <ul style="list-style-type: none"> <li>• Do not pay by the purchase. <ul style="list-style-type: none"> <li>• Flat rate.</li> <li>• By the hour.</li> <li>• School Credit.</li> <li>• Food.</li> </ul> </li> </ul> </li> <li>• <b>Insurance.</b> <ul style="list-style-type: none"> <li>• In the event they are injured while working as your agent.</li> </ul> </li> <li>• <b>Availability for court or administrative hearings.</b> <ul style="list-style-type: none"> <li>• How long will it take your case to go to trial if it is contested?</li> </ul> </li> </ul>
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<p>Key Step in Preparing for Compliance Investigations</p> <ul style="list-style-type: none"> <li>• Selection of locations. <ul style="list-style-type: none"> <li>• Must reflect fairness.</li> <li>• You will likely be asked to justify this decision in court, to the community, or to the industry.</li> </ul> </li> </ul>	
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<p>Options for Selecting Locations for Compliance Investigations</p> <ul style="list-style-type: none"> <li>• Investigate all retail outlets in the community. <ul style="list-style-type: none"> <li>• Is this possible?</li> </ul> </li> <li>• Selection of locations. <ul style="list-style-type: none"> <li>• Select locations at <b>random</b>. This is required for SYNAR tobacco checks.</li> <li>• Investigate all retailers in particular geographic areas (e.g., near a college campus).</li> <li>• Select certain kinds of outlets (e.g., convenience stores).</li> <li>• Select locations based on complaints or previous violations.</li> <li>• Select based on community input or stated concern.</li> <li>• Investigation of Event Licensees.</li> </ul> </li> </ul>	
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## Basic Procedures/Protocols

- Safety of the buyer(s) and officers working the detail is always the top priority.
- Keep it simple.
- Remember Murphy's Law – What can go wrong will go wrong – plan for the unexpected.
- Be observant!!

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## Basic Procedures/Protocols

- Pre-Operation Briefing – Coordinate with your department and others that will be involved in the detail.
  - Notify others in the department on a need to know basis.
  - Review locations to be inspected and check for possible conflicts.
  - If possible, have a basic knowledge of the stores layout so you can direct minors where to go once inside the establishment to obtain the product.

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## Procedures/Protocols for Conducting Investigations

- Your underage youth buyer/decoy should be photographed prior to the start of each set of compliance checks.
- Audio/Video recording.
- Record serial numbers of buy money.

Images Courtesy Nancy McGee



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## Procedures/Protocols for Conducting Investigations

- Your Underage buyer/decoy should only carry their valid drivers license (unless approval has been obtained from prosecutor ahead of time for other protocols) and pre-recorded buy money.
  - Have them empty their pockets before they begin the operation.
  - Check purses, bags or anything else the underage buyer may have with them.
  - Physical pat-down?
- If for any reason they will be using their own vehicle for example testing the compliance of a drive through liquor store – search the vehicle as well. This situation may occur more frequently as a result of Covid-19 guidelines that may allow for curbside pick-up of both package and to go beverages.



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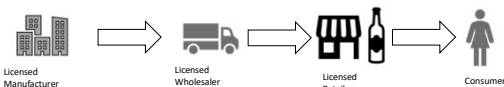
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## Home Delivery & Online Sales

### Normal Supply Chain



### Home Delivery & Online Sales



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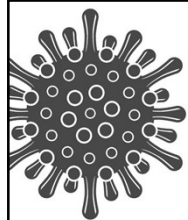
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## COVID-19 CORONAVIRUS

- Executive Orders and Municipal Orders allowing for Internet sales, Home delivery, and Curbside to go drinks.
  - Current relaxation of sales/delivery guidelines have created the need to conduct compliance checks of non-traditional settings.
- It is imperative that you work with City Attorney and the ND Attorney General's Office to investigate complaints and develop appropriate protocols in reference to these locations.
- Issues of concern:
  - Safety concerns of youth buyers/officers – Mask protocols.
  - Internet Sales – Jurisdictional Issues.
  - Home delivery – When does the sale occur?
  - Curbside to go – Open container Laws.

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## Procedures/Protocols for Conducting Investigations

- Timing and scheduling of investigations.
- Number of buyers/decoys and officers.
- Review with the buyer the alcohol & tobacco products to purchase and quantity purchased – minimum to make the case – Allow for some flexibility.
  - Are you testing for single sales today?
- Other items to purchase.
  - Only if you are testing compliance with other statutes/ ordinances - Should not buy snacks, sodas, gum etc.

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## Procedures/Protocols for Conducting Investigations

- Park vehicles so as not to tip off the clerk.
- Where possible, a plain clothes officer or adult volunteer should be present in the store with the buyer to ensure safety of the minor and to observe the transaction.
- Who goes in first?
  - Officer/Adult volunteer or Buyer.
  - Depends on the location.
- There are pros and cons to both situations; the keys are:
  - Minor and Officer safety and
  - to have the minor approach the service counter alone and attempt to purchase the product – you want to avoid the appearance that they are together which might trigger excuses such as “I thought they were with their dad or mom”.

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### Off Premise Location #1

#### Presented by:

Nancy McGee, JD  
Retired Special Agent  
Missouri Department of Public Safety,  
Division of Alcohol & Tobacco Control

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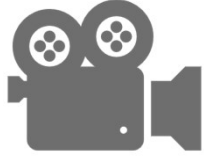
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Off Premise  
Location #2

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**Presented by:**

**Nancy McGee, JD**  
Retired Special Agent  
Missouri Department of Public Safety,  
Division of Alcohol & Tobacco Control

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Considerations  
for Large Box  
Stores and  
Limited Sight  
Establishments

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Compliance Checks at On-Premise Locations

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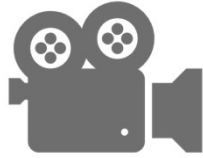
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Compliance  
Check  
Investigations at  
On-Premise  
Locations

**Presented by:**

**Nancy McGee, JD**  
**Retired Special Agent**  
**Missouri Department of Public Safety,**  
**Division of Alcohol & Tobacco Control**

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Considerations for On-Premise with  
No designated bar area

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Compliance  
Check  
Investigations  
Non-Traditional  
Circumstances

**Presented by:**

**Nancy McGee, JD**  
**Retired Special Agent**  
**Missouri Department of Public Safety,**  
**Division of Alcohol & Tobacco Control**

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## Non-Traditional Locations

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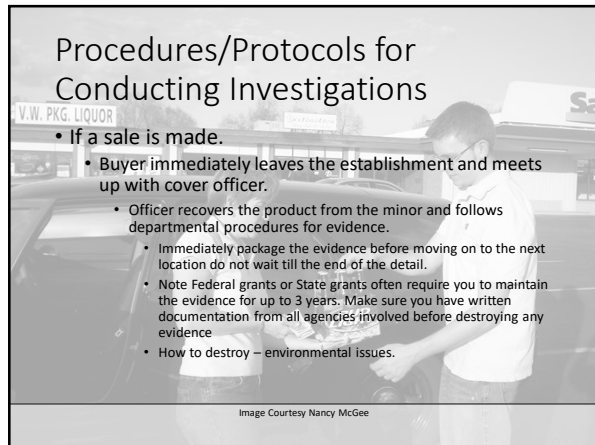
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## Procedures/Protocols for Conducting Investigations

- If a sale is made.
  - Buyer immediately leaves the establishment and meets up with cover officer.
  - Officer recovers the product from the minor and follows departmental procedures for evidence.
    - Immediately package the evidence before moving on to the next location do not wait till the end of the detail.
  - Note Federal grants or State grants often require you to maintain the evidence for up to 3 years. Make sure you have written documentation from all agencies involved before destroying any evidence
  - How to destroy – environmental issues.

Image Courtesy Nancy McGee

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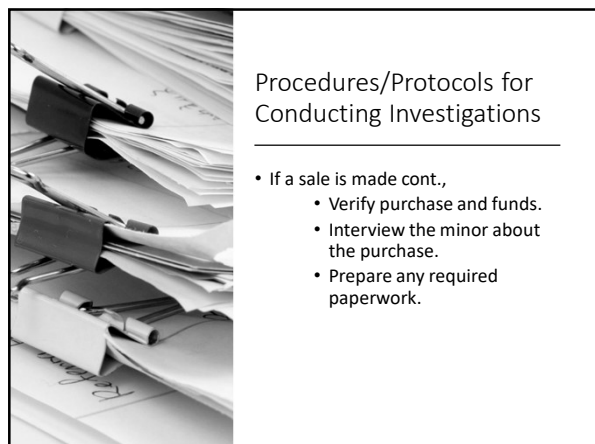
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## Procedures/Protocols for Conducting Investigations

- If a sale is made cont.,
  - Verify purchase and funds.
  - Interview the minor about the purchase.
  - Prepare any required paperwork.

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### Procedures/Protocols for Conducting Investigations

- Timing for issuing citations.
  - When to return to the store for enforcement is a key factor in the operation.
    - Immediately.
  - End of the operation:
    - Avoids possibility of phone tree issues.
    - May create issues with identification of clerk.
    - Do you have an ordinance in place to deal with the phone tree effect?
      - NE case.



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### Procedures/Protocols for Conducting Investigations

- State law summons or ordinance violation.
  - May be dictated by grant requirements, if not it should be determined ahead of detail and should be consistent throughout all operations.
  - Custodial arrests – defer to departmental policy.

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### Procedures/Protocols for Conducting Investigations

- Obtain evidence if available:
  - Receipts.
  - Video.
  - Money used for purchase?
- Have a plan in place to deal with vendor demands to see the buyer or if the clerk seizes the identification of your underage buyer.
  - Minors are never presented or allowed to be confronted by seller or business representative.
  - Be sure to discuss with prosecutors the need to safeguard your buyer(s) identities – Disclosure should only be done under court order with limitations.

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Procedures/Protocols for Conducting Investigations

- Interview Seller:
  - Record Spontaneous statements.
  - Determine if seller has been trained in proper sales.
  - Inquire about business policies regarding the sale of age restricted products.
  - Miranda issues be sure to clear with prosecutor.
    - Most of the information obtained in this process will not be used to prosecute, but rather to educate the retailers.
- Make note of signage in store.
- Determine if other ordinance violations exist.
  - Failure to ID, placement of product.

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Useful Elements to Include in an Investigation Record

- Store name.
- Address.
- Date and time.
- Results of the attempt.
- Type of outlet.
- Age, gender, and race of seller.
- Item purchased.
- Was ID requested?
- Was ID checked?

- Employee training.
- Store signage.
- Number of clerks present.
- Age, gender, and race of buyer.
- Was a calendar or ID checking machine present and used?
- Copy of photo of the buyer as s/he appeared that night.

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Procedures/Protocols for Conducting Investigations

- If a purchase is made, the underage buyer should complete a written statement detailing the purchase.
  - Create a fill in the blank form for them to complete.



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Things You Should Not Do!!!

Provide buyers with fake citations showing them to be of age.

Buyers openly carrying alcohol or tobacco products.

Do not disguise or accessorize buyers (hair sprayed gray, wearing of a wedding ring, carrying a briefcase).

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Considerations for Compliance Check Investigations

- Frequency of investigations.
  - The regularity of checks does impact the sales rate. The issue is to find the right balance for your community based upon the sales rate, the number of outlets, and available resources. This may be set by grant requirements.
- Re-checks on businesses that failed.
  - Allow time for business to take corrective action.
- When do you check a new business?

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Post Operation

- At the end of the detail there should be a debriefing of all involved.
  - Identify areas of concern or confusion.
  - Identify and document any incidents that were not handled well.
  - Ensure that all paperwork is completed.
  - Statistics are gathered.
  - Information for press releases.

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## Enforcement Follow-Through

- Notification to businesses of the results of a compliance check investigation.
  - Compliant/Non-compliant letters.
  - If they pass you may want to consider sending a congratulatory letter.

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## Enforcement Follow-Through

Penalties on clerks.

Penalties on license holders.

Work with judicial partners.

Work with community leaders to create environmental change (including youth).

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## Key Steps Post Compliance Investigations




**Data Collection.**

Failure to maintain adequate data will ultimately result in the failure of your efforts.  
Create standard forms that make it easy to track data.



**Keep complete and accurate records.**

A complete case file should be kept for each sale case.



**Review your data to see if trends emerge.**

If trends emerge share this information with the retailers and policy makers.

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Audits

- Audit based operations:
  - Commonly used to get a baseline of compliance rates.
- Baseline Audit:
  - Businesses checked with notification completed after all designated locations are checked.
  - Data collected to determine starting compliance rate.

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Audits

- Non-Enforcement Audit:
  - During the transaction – if the business refuses the sale, it is recognized for preventing youth access.
  - If the transaction appears to be moving toward a sale, the transaction is stopped and the business and seller are advised what would happen had the sale occurred.
  - Of age coverts – Youthful appearing adults are used to ensure businesses are carding.

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Key Steps in Preparing for Investigations

- Work with the media.
  - The power of compliance checks lies not only in holding retailers accountable, but in using the opportunity to bring attention to the problem and begin to change community perception about the issue.

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## Key Points for Working with the Media

- Develop a positive and proactive relationship with the media.
- Notify the media in advance.
- Invite media representatives to observe investigations.
- Provide key information to the media after investigations are concluded.



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## Information for the Media on Compliance Investigations

- What percentage of retailers sold alcohol or tobacco to the youth?
- What percentage of retailers asked for ID but sold anyway?
- What percentage of retailers had warning signs posted or signs that stated they asked for ID? What percentage of those with posted signs sold?



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## Information for the Media on Compliance Investigations

- Are some types of businesses more likely to sell than others (e.g., convenience stores, gas stations, grocery stores)? What percentage of each sold?
- Are young clerks more likely to sell than older clerks?
- Are two-clerk stores less likely to sell?
- Do male clerks or female clerks sell more often?



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Departmental Website

- Utilize your departmental website, Facebook, and twitter accounts to release the results of your compliance checks.
- This could also be a good place to have a link to anonymously allow citizens to file a complaint about establishments that are illegally selling to youth.

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Key Steps in Preparing for Compliance Check Investigations

- Work with community leaders.
- Work with prosecutors, courts and regulatory agencies.
- Work with industry/retailers.
- Selection of youth buyers.
  - Training of youth buyers.
  - Documentation of youth buyers.
- Selection of locations.
- Procedures/Protocols for conducting investigations.
- Data collection.
- Work with the media.

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Let's Review

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Photograph your underage buyer  
prior to start of the evening

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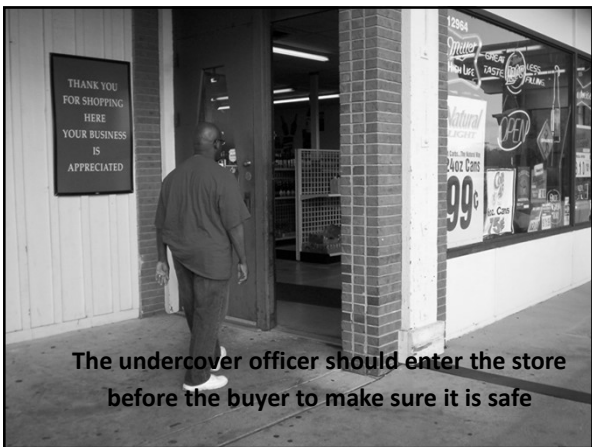
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The undercover officer should enter the store  
before the buyer to make sure it is safe

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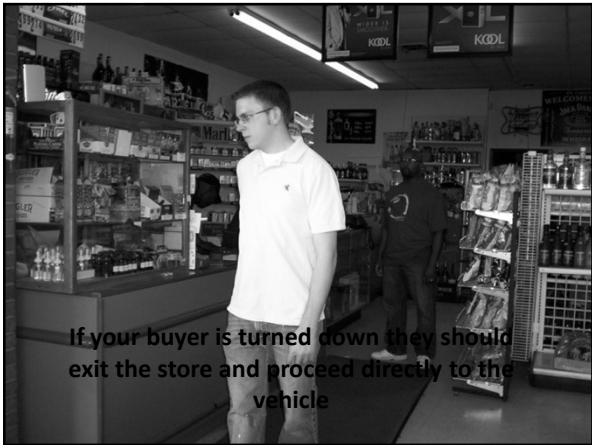
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If your buyer is turned down they should exit the store and proceed directly to the vehicle

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If our buyer is able to purchase once again they should exit the store and proceed to the vehicle

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The buyer should contact the back-up officer and handoff the liquor and change

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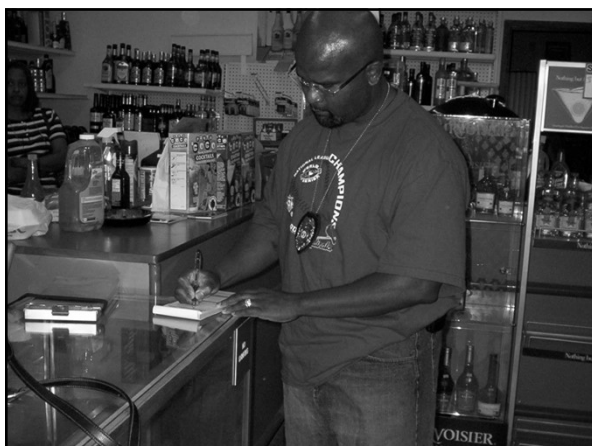
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### Legal Disclaimer

- This program contains references to statutes, case law and related materials.
- This program does not create a legal relationship between Cabin Village & Associates, LLC, the State of North Dakota or any of today's presenters.
- This program does not constitute legal advice and does not establish an attorney-client relationship.
- Consult with your legal advisor to answer your questions and to obtain legal advice.

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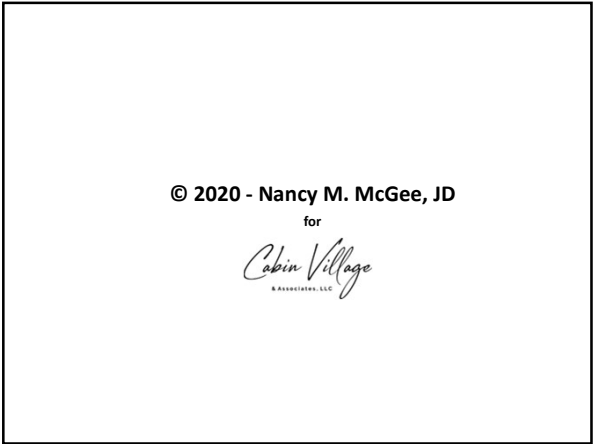
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