



The Artful Dodger

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PBTs and MIPs — Can They Mix?

Prosecuting
Attorneys Association
of Michigan

This publication, with a nod to Charles Dickens's "Oliver Twist" is designed to provide information on the problem of Underage Drinking.

The nickname, "Artful Dodger", is still commonly used to refer to someone who is good at avoiding responsibility or the consequences of his/her actions.

Federal Court Rules MIP-PBT Statute Unconstitutional

Katie Platte, et al v. Thomas Township, et al (#05-10200, US District Court, Eastern District of Mich., Southern Division) was decided on September 26, 2007, by US District Court Judge David Lawson. He ruled that the state statute police officers previously relied upon to compel PBT tests on minors suspected of having unlawfully consumed alcohol (MCL 436.1703(6)) was unconstitutional on its face. Further, the opinion specifically stated the Governor of the State of Michigan, the Michigan State Police, Thomas

Township, "their servants, agents and employees, and those in active concert and participation with them, are RESTRAINED AND ENJOINED from enforcing or imposing sanctions under MCL 436.1703(6)..."

While the court did not enjoin all law enforcement agencies, the practical impact of this ruling, as it presently stands, is that police officers may not rely on any authority granted them through the enactment of MCL 436.1703 (6). Bottom line,



police **officers should not request a minor to submit to a PBT unless they have previously secured a search warrant for the test or, alternatively, have obtained a valid and documented consent** from the minor to be tested.

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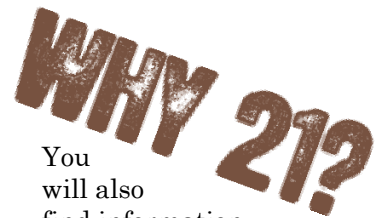
Underage Drinking: Why 21?

Lately, the 21 Year Age Limit for drinking has been under a strong attack. As the nation's debate on the Minimum Drinking Age Law rages on, it's easy to mistake opinions as facts.

To let people know about the facts, MADD recently launched a new web site

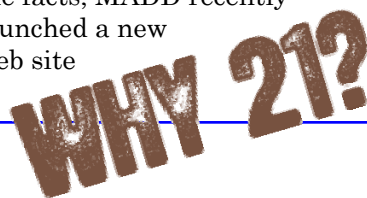
at why21.org that provides the facts about underage drinking to all age groups, including information for parents about how to talk to your teens about alcohol.

This site is where you can get the straight truth on why the law is important to you—regardless of your age—and how it saves lives.



You will also find information on how alcohol affects the teen brain, the realities of underage drinking, facts to common myths and a history of the drinking age law. There is also a

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Underage Drinking: Why 21?

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wealth of information, resources and tips for parents, educators and communities on preventing underage drinking.

Arm yourself with the truth and then decide. Some examples of what is on the web page are below.

It Saves Lives

In 2003, the Centers for Disease Control (CDC) looked at 49 high-quality, peer-reviewed studies on the effects of changing the minimum age drinking law. Almost every study found that increasing the minimum drinking age to 21 saved lives with an average decrease in traffic fatalities of 16 percent. The studies also showed that lowering the minimum drinking age to 18 or 19 caused an average increase in crashes by 8 to 10 percent.

NHTSA's study, "*Determine Why There Are Fewer Young Alcohol-Impaired Drivers*" found that between 1982 and 1998, there were 61 percent fewer drinking drivers involved in fatal crashes under age 21 and a 56 percent decrease among 21-24 year olds. This is against a backdrop of a decrease of only 24 percent among 25-55 year olds. There were a number of safety improvements during this time including better roads and laws, and safer cars. But because the people most directly affected by the law had the greatest decreases, NHTSA concluded "unequivocally that MLDA 21 laws

WHY 21?

reduce youth drinking and driving, as measured by traffic crash involvements."

It Saves the Brain

A person's brain does not stop developing until his or her early to mid-20s and adding alcohol to the mix is a recipe for disaster. The brain goes through dynamic change during adolescence, and alcohol can seriously damage long- and short-term growth processes. Frontal lobe development and the

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refinement of pathways and connections continue into the mid-20's. Damage from alcohol at this time can be long-term and irreversible. In addition, short-term or moderate drinking can impair learning and memory far more in youth than in adults. Adolescents need only drink half as much as adults to suffer the same negative effects.

Here are some quick facts about alcohol use and the developing brain:

- Alcohol impacts both behavior and brain function differently in adolescents and adults.
- Adolescents are more vulnerable than adults to the effects of alcohol on learning and memory.
- Alcohol affects all parts of the brain, which affects coordination, emotional control, thinking, decision-making, hand-eye movement, speech, and memory.
- Adolescent drinkers perform worse in school, are more likely

to fall behind and have an increased risk of social problems, depression, suicidal thoughts and violence.

People who begin drinking in their early teens are not only at greater risk for developing alcoholism sometime in their lives, they are also at greater risk for developing alcoholism more quickly and at younger ages, especially chronic, relapsing alcoholism.

Common Myths and Facts

Myth: If I'm old enough to go to war, I should be old enough to drink.

Fact: Many rights have different ages of initiation. You can get a hunting license at age 12, drive at 16, vote and serve in the military at 18, serve in the U.S. House of Representatives at 25, and serve as the U.S. President at 35. Other regulated rights include the sale and use of tobacco, and legal consent for sexual intercourse and marriage. Vendors, such as car rental facilities and hotels, also have set the minimum age for a

person to use their services—25-years-old to rent a car and 21-years-old to rent a hotel room.

And these minimum ages are set for a reason. In the case of alcohol, 21 is the minimum age because a person's brain does not stop developing until his or her early to mid-20s.

For this and additional information on why the Minimum Age Drinking Law is important, go to www.why21.org.



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At this point, there has been no decision by the Attorney General's Office on whether or not to appeal the decision of the Federal Court, nor has a stay been requested. Therefore at this point, the ruling stands. The statute is unconstitutional and law enforcement officers can not compel a minor to take a PBT.

Law enforcement officers will have to do an investigation using the tools they learned before technology:

- What is in their hands?
- How do their eyes look?
- How do they smell?
- How do they speak?
- How do they act?
- Are there beer bottles around the person?
- What evidence is there that the minor had been drinking?

It is these kinds of questions that an officer should ask.

MIP charges are not dead and buried, just the use of the PBT is – when trying to compel a test. Of course, in the appropriate situation, an officer can always get a search warrant for the person's blood.

Additionally, another tool that some law enforcement officers have is the "P.A.S." (Passive Alcohol Sensor) Flashlight. This is a flashlight that has at the other end a sensor for alcohol. The P.A.S. is used to check



for the presence or absence of alcohol with or without a subject's direct participation. When used without the subject's direct participation it is known as passive sampling, as opposed to active testing where the subject blows directly into a mouthpiece. While it does not give a BAC reading, it provides an indication of drinking and may be very useful in these cases – now that there are issues with the PBT. And since it is taking the air around the person, there should be no issues under the 4th amendment.

What is important to remember is that MIP cases are not the "minor" offenses as Judge Lawson stated. These cases are important tools in indicating future alcoholism.

Bottom line, police officers should not request a minor to submit to a PBT. . . unless they have obtained a . . . valid consent.

Alcohol can damage a child's brain, causing long term damage as the brain is not fully developed. And then the obvious concern, minors drink and then drive – and then all too often, they die. Being proactive in these cases can help the community in the long run and save lives right now.

While we can no longer compel a PBT to be given to a minor, this does not mean that these cases shouldn't be enforced and prosecuted.

Another Myth

Myth: Europeans let their kids drink at an early age, yet they do not have the alcohol-related problems we do.

Fact: This popular myth, which is referred to as the "European Myth", was dispelled by the facts of the 2003 European School Survey Project on Alcohol and Other Drugs and the United States 2003 Monitoring the Future report.

What was discovered is that in most European countries, young people have higher intoxication rates than in the United States, and less than a quarter had lower or equivalent rates to the United States.

Also, a greater percentage of young people in a majority of European countries report binge drinking at higher rates than compared to their US counterparts, and that some European youth have higher rates of alcohol-related problems because of their heavy drinking.

Perhaps the best example of fact versus myth when it comes to the "European Myth" is a look at what happened in New Zealand. In 1999, New Zealand lowered its purchase age from 20 to 18. Not only did drunk driving crashes increase, but youth started to drink earlier, binge drinking escalated, and in the 12 months following the decrease in legal drinking age, there was a 50 percent increase in intoxicated 18- and 19-year-old patients at the Auckland Hospital emergency room.

Clearly, Europe has serious issues with youth alcohol use.

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We're on the Web!

www.paamtrafficsafety.com

Quick Fact:

According to a recent survey by the National Center of Addiction and Substance Abuse, a recent survey revealed that at least once a week on their school grounds, more than four million students see other students drunk.

A Call To Action by the U.S. Surgeon General



The phone is ringing—when will you answer it?

In March 2007, the acting U.S. Surgeon General released his *Call to Action to Prevent and Reduce Underage Drinking*, which properly and

methodically outlines the serious nature of underage drinking. He also provides a roadmap for communities and states to follow in order to greatly reduce the problems with underage drinking.

Developed in collaboration with the National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the Substance Abuse and Mental Health Services Administration (SAMHSA), the Call to Action identified several goals.

The key recommendations include:

- Increase enforcement of underage drinking laws.
- Properly educate parents to provide them with factual information about the dangers of adolescent alcohol use.
- Community members collaborate on partnerships and coalitions to implement effective prevention strategies.
- Have Universities examine their policies and practices to ensure they are sending a strong message that underage alcohol use is illegal.
- Decrease accessibility of alcohol to those under 21.
- Ensure the judicial system is properly enforcing laws.

- Decrease the amount of alcohol advertisement reaching a youth audience.

"Alcohol remains the most heavily abused substance by America's youth," said Dr. Moritsugu. "This Call to Action is attempting to change the culture and attitudes toward drinking in America. We can no longer ignore what alcohol is doing to our children."

Copies of *The Surgeon General's Call to Action to Prevent and Reduce Underage Drinking* and other related materials are available at www.surgeongeneral.gov or by calling the National Clearinghouse for Alcohol and Drug Information at 1-800-729-6686.



United States Department of
Health & Human Services