

Overview of Minor in Possession Ordinances

There are three common types of minor in possession ordinances:

1. **Actual physical possession** – The subject is deemed in possession if they physically have an alcoholic beverage in their hand.
2. **Possession by consumption/internal possession** – The ordinance provides that the subject can be deemed in possession if they have consumed alcoholic beverages. The law enforcement officer need not have witnessed the physical possession or consumption. Consumption may be established either by a proscribed blood alcohol content (BAC) level, or by other means such as officer testimony in conjunction with a field sobriety test. Note: This type of ordinance is useful in dealing with parties since the police have usually not witnessed the actual consumption.
3. **Constructive possession** – A person is deemed to be in constructive possession if they have access to alcoholic beverages in a setting that would indicate that they had the intent and capability to maintain control over the alcohol; for instance, if alcoholic beverages are in the back seat or trunk of a vehicle they are driving, or alcoholic beverages are located in a cooler on a raft they are floating on, they would be deemed to be in constructive possession of the alcohol.

Ideally communities will address all three types of possession in one ordinance or a set of ordinances. It is important for communities to identify if they have a current comprehensive minor in possession ordinance or set of ordinances to address physical possession, possession by consumption/internal possession, and constructive possession. An ordinance that only addresses actual physical possession should be amended to include possession by consumption/internal possession and constructive possession.

The Goal of Minor in Possession Ordinances

The goal of these ordinances is twofold:

1. To deter usage of alcohol by those who are underage and to protect youth from the negative consequences of engaging in behavior that they are not developmentally prepared for and;
2. To reduce unintentional injuries, death, and criminal behavior among young people

For deterrence to be effective, sanctions must be swift and certain, and there must be a consequence. “Deterrence through threatened sanctions, both legal and social, is needed. Enforcement and public awareness of enforcement are essential if restrictions on youth access to alcohol are to be effectively implemented.”¹ A 2005 research study found “that

communities with increased levels of enforcement tended to have lower community levels of binge drinking and drinking in general. These effects are consistent with the notion that perceived negative consequences (being caught by the police), if broad and severe enough, could be a deterrent to behavior.”²

Why Minor in Possession Ordinances are Important to Communities

The Reducing Underage Drinking: A Collective Responsibility report recommended that every state should have a law which prohibits the “purchase or attempted purchase, possession, and consumption of alcoholic beverages by persons under 21.”³ While the State of Illinois prohibits the possession and consumption of alcoholic beverages by minors⁴, it is also useful for communities to enact concurrent ordinances. **Note:** The Illinois Liquor Control Commission does not have law enforcement authority and therefore cannot issue criminal charges when they encounter youth in possession of alcohol. Local police officers can enforce the State Statute, but often they may be hesitant to do so. Officers may find the State process to be cumbersome and time consuming. Additionally, officers may be frustrated by a lack of State level prosecution.

Having local ordinances in your community that address underage purchase, possession, and consumption provides law enforcement with an easier and more effective method of enforcement. In addition, the adoption of a local ordinance sends a message to the community regarding unacceptable behavior on the part of youth and can serve to change community norms regarding underage drinking.

Considerations for Minor in Possession Ordinances

Precise language is key in the drafting of these ordinances. You should consider all activity that you wish to prohibit; purchase, physical possession, possession by consumption, and constructive possession, and then ensure they are addressed within your ordinance. The ordinance should address if there will be any exemptions (e.g. the ordinance should provide an exemption for youth who are under the supervision of law enforcement conducting compliance check operations). Another exemption may be for religious purposes.

A key component of the ordinance will be the penalties section:

- Will a violation be treated as a criminal offense or a noncriminal infraction?
- What sanctions will apply?

There are many options available including monetary fines, community service, and education programs. Finally, your ordinance should address the collection of fines assessed. Areas that must be thoughtfully considered and must be addressed in your ordinance include distribution of fine collected are:

- Will the money be placed in the general revenue fund of the City?
- Will the money be applied to a special dedicated source of funding to be used for education, treatment programs, and enforcement?

Helpful Tips and Suggestions

Solicit input from youth regarding what would be viewed as a meaningful sanction and what might have a deterrent effect on their behavior. In addition, you should work with law enforcement and local attorneys to address potential loopholes and implementation pitfalls ahead of time. It will also be important to educate all parties impacted (youth, parents, educators, health care professionals, and law enforcement), once the ordinance is passed.

In addition, it is critical to secure the support of local adjudicators to ensure sanctions are applied and carried out.

Resources and Tools

[65 ILCS Illinois Municipal Code](#)

<https://www.municode.com/>

<http://www.sterlingcodifiers.com/>

References

1. National Research Council and Institute of Medicine (2004). Reducing Underage Drinking: A Collective Responsibility. Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, Richard J. Bonnie and Mary Ellen O'Connell, Editors. Board on Children, Youth, and Families, Division of Behavioral and Social Sciences and Education. Washington DC: The National Academies Press.
2. "Community Level Alcohol Availability and Enforcement of Possession Laws as Predictors of Youth Drinking" *Prev Med* 2005 Mar; 40(3); 355-362 Clyde Dent, Joel W. Grube and Anthony Biglan
3. National Research Council and Institute of Medicine (2004). Reducing Underage Drinking: A Collective Responsibility. Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, Richard J. Bonnie and Mary Ellen O'Connell, Editors. Board on Children, Youth, and Families, Division of Behavioral and Social Sciences and Education. Washington DC: The National Academies Press.
4. 235 ILCS 5/6-16(a) & 235 ILCS 5/6-20(a & e)