

## **GUIDELINES FOR USING UNDERAGE COOPERATING INDIVIDUALS DURING COMPLIANCE CHECKS**

53-1,122 authorizes law enforcement to conduct alcohol compliance checks, pursuant to guidelines adopted and promulgated by the Nebraska State Patrol with input from the Nebraska Liquor Control Commission (NLCC). The following guidelines have been established when using underage individuals to conduct alcohol compliance checks. Compliance checks shall only be conducted in order to further the public policy of deterring minors from illegally obtaining or consuming alcoholic liquor and compliance with 53-180 & 53-180.02.

Prior to conducting compliance checks a list of randomly chosen locations should be developed. It is appropriate to add locations that have failed previous compliance checks and/or locations for which complaints of alleged sales of alcohol to minors have been received. (Locations that have failed previous compliance checks should be given sufficient time between checks to allow the licensee to develop and implement strategies to address sales to minors.) Once a location that has failed previous compliance checks passes a subsequent check, they be should be removed from the prior failure list. If sufficient personnel are available, it is also appropriate to check all the locations in a certain geographic area or with the same license class. Law enforcement officers should oversee the location selection process.

Parental permission is required for cooperating individuals under the age of 21 (unless emancipated). Minors selected as C.I.s for conducting compliance checks shall, in their dress and appearance, be within the range of normal for minors in that geographical area. There should be no alteration to their normal dress and/or appearance for conducting compliance checks. Do not hesitate to instruct, advise and/or correct a C.I. in appearance matters regarding appropriateness for compliance checks, including clothing, facial hair and makeup. Hat or caps if worn, should be worn in a manner that is normal for their age and shall not be pulled down over their eyes. Minors who are 20 years of age shall not be used in the same calendar year they turn 21.

C.I.s shall be informed that they are required to appear and testify before the NLCC if needed. When appearing before the NLCC, the C.I.'s appearance should be the same or similar to the way it was when the compliance check was conducted. Witness fees and mileage are paid to individuals subpoenaed to appear. If the C.I. is paid for conducting compliance checks, payment should be made on an hourly or daily basis and shall not be paid based on the number of checks or the number of purchases. Continued use of an individual as a C.I. shall not depend on the number of cases made. The use of individuals working to avoid being charged for a prior or pending alcohol violation is discouraged by the NLCC.

C.I.s should not order or purchase more alcohol than is reasonable to establish a violation. (It is not necessary for a C.I. to consume alcohol for a violation to occur; having alcohol in his or her possession is a violation of the Liquor Control Act.) The type and quantity of alcohol purchased shall be reasonable for the age individual and reflect the marketplace.

### **Underage C.I.s should be specifically instructed:**

- Not to use a disguise that makes them appear older than they actually are.
- To only use their own personal, valid identification, i.e., driver's license, state I.D., etc.
- The Underage Cooperating individual may indicate they are of legal if age related questions are asked, when no I.D. is requested. However the Underage Cooperating Individual shall produce their valid identification if requested.
- To correctly fill out the documentary proof of age booklet if requested to do so. In order to protect the safety of the C.I. they may use an address that is not their own. The address of the local law enforcement agency is suggested as an appropriate substitution.
- To be prepared to accurately describe and identify the sales clerk for enforcement action.
- If asked they may answer the question, "Are you working for law enforcement?" with "No."
- That departing from the guidelines is grounds for dismissal as an Underage Cooperating Individual.
- Any convictions of law violations; in particular use of tobacco or alcohol is grounds for dismissal.
- If their ID is scanned by any electronic device, they shall notify officers conducting the compliance checks.

**Enforcement officers should:**

- Be positive the C.I. understands all instructions and knows exactly what to do and say. (Coaching a C.I. on how to look and act older is not permitted.)
- Photograph the minor prior to beginning the compliance check. Several photos may be needed as exhibits for court/commission proceedings.
- Ensure that the C.I. is not in possession of any form of identification other than his or her own, valid identification, and has no alcohol on his or her person.
- Make a photo copy or take a photograph of the C.I.'s identification.
- Remain in close proximity, or actually enter the retail outlet to view as much of the transaction as possible, avoid consuming alcohol themselves.
- Ensure C.I. safety by monitoring the C.I.'s conversation with a transmitter or other equipment if practical and if such equipment is available.
- Supply the C.I. with any funds needed to make purchases and document expenditures as they occur (noting specifically the amount tendered and change received).
- Immediately take possession of the evidence from the C.I. upon leaving the retail establishment.  
\*Note: For purchases made at on-sale locations the officer should confirm that the beverage served to the minor contains alcohol (by smell, personal observation, and/or by their training and experience).
- Not conduct multiple, non-simultaneous compliance checks on a single establishment within a 24-hour time period.
- If the identification of the Underage Cooperating Individual is scanned by any electronic device, officers shall enter the premises to determine if any information collected is in compliance with 60-4,111.01, only the age and license or card number may be retained by such a device. Officers may enter the premises immediately following the compliance check, or have a separate team of officers enter the premises to verify what information is collected and to check for required signs notifying patrons that their ID may be scanned.

**Upon detection of a violation:**

- The sales clerk should be issued a criminal citation to court for the violation.
- The staff should be notified that a report will be sent to the Liquor Control Commission for administrative proceedings against the liquor license.
- The C.I. should immediately prepare a written statement regarding the details of the purchase, identification of the clerk/bartender and any conversation pertinent to the case.
- Officers should prepare a written report which includes a brief statement regarding the instructions that the C.I. was given prior to the compliance check. The report may also indicate that these guidelines were followed. In addition, reports should include: 1) the time and date of the purchase; 2) the brand, quantity and type of alcohol purchased; 3) the amount spent for the purchase; 4) the identity of all clerks/bartenders/wait staff involved in the sale and other witnesses if appropriate; 5) if the C.I.'s identification was checked and if he documentary proof of age book was used; and, 6) the name of the business involved and the liquor license number, if known. *Because Liquor Control Commission Hearings often are held several months after a violation is discovered, it is important to ensure that the C.I.s and officers reports contain all the elements of a violation, are accurate and are complete enough to refresh your memory prior to providing testimony.*

Mailing congratulatory, follow-up letters to establishments indicating that they successfully passed a compliance check is suggested. (The date and time of the compliance check and the name of the clerk/bartender present, if known, should be noted in the letter.)

It is requested that the results of any compliance check be sent to the State Patrol Alcohol Tobacco Enforcement Coordinator in order to maintain an accurate statewide database of compliance rates, I.D.'s checked and the ages of the C.I.s used.

Upon request the State Patrol can provide law enforcement agencies pre printed compliance check forms as well as sample forms for parental permission, C.I. agreements, C.I. briefing sheets, violation reports, and congratulatory letters. Questions, comments, suggestions and requests for more information or training should be directed to:

Nebraska State Patrol, Alcohol-Tobacco Enforcement Coordinator, (402) 471-8494