

September 27, 2007

The STOP Act: an examination of the Sober Truth on Preventing Underage Drinking Act, Public Law 109-422.

prepared by the Policy Work Group of the RR Forum

I. RRF Policy Work Group process

The RRF's Policy Work Group periodically selects topics of interest that can be examined in greater detail from the perspective, and with the contribution of, diverse RR stakeholders. This year, the PWG has chosen the STOP Act—the Sober Truth on Preventing Underage Drinking Act—as one of its two principal topics. Interest in the STOP Act began before there were any indications that the proposed legislation—first filed in July, 2004 as a response to the report from the National Academies of Science / Institute of Medicine, *Reducing Underage Drinking: a Collective Responsibility*—might ever become law. Alcohol regulators in the RRF were expressing interest in issues of federal-state authority for alcohol policy and federal-state relationships. Researchers in the RRF were interested in the proposed annual “report card” of state efforts to combat underage drinking and the question: How can the intensity and effectiveness of state efforts be accurately described? When revisions to the proposed STOP Act (acknowledging the importance of state regulation of alcohol and the necessary contributions of the three-tier system to preventing underage drinking) led industry stakeholders to add their backing to the continued support of the public health and advocacy communities, the legislation won swift approval from Congress and the President. So an examination of the STOP Act has become extremely timely and relevant.

The Policy Work Group (PWG), co-chaired by Lynn Walding of the Iowa Alcoholic Beverages Division and Pam Frantz of Beam Global, held its first meeting on November 27, 2006 in Alexandria, VA. The PWG—representing regulators, producers and distributors, retailers, state attorneys general, public health advocates and researchers—elected to examine implementation issues

related to the STOP Act: in particular, issues relating to an “Annual Report” of state efforts to prevent underage drinking and to coalitions that would be funded under the STOP Act. The PWG also created a second committee that is separately examining Social Sources and Over-Service Issues. The second meeting of the PWG was held in Washington, D.C. on February 7, 2007 (participant list attached). What emerged from that meeting was a process for examining the STOP Act and presenting that examination to SAMHSA—the federal agency that would implement the STOP Act if funds were appropriated by Congress—and to participants of the 2007 RRF national meeting in Santa Fe, NM.

II. Context of the STOP Act enactment

The Sober Truth on Preventing Underage Drinking Act, or “STOP Act,” was signed into law by President Bush becoming Public Law 109-422 on December 20, 2006. This law, which amends Section 519B of the Public Health Service Act (42 U.S.C. 290bb-25b), was made possible through the work of a collective body of dedicated legislators, advocacy organizations, state regulators and members of the alcohol industry who all had a desire to further prevent underage drinking. However, passage of this legislation required several years and collaborative efforts between disparate positions. The STOP Act as originally introduced in July, 2004 was not well received by alcohol industry members and certain regulators. This original bill died at the end of the 108th Congress. A similar bill was reintroduced in the early days of the 109th Congress and suffered a similar fate as its predecessor as the congressional sponsors, advocacy organizations, state regulators and members of the alcohol industry did not share the same view on the merits of this legislation.

In July 2006, the sponsors of the legislation indicated a willingness to work with industry to support some changes to the legislation and members of the alcohol industry agreed to accept certain positions they had previously opposed. Moreover, the congressional sponsors expressed a strong willingness to recognize and accept the importance of state-based alcohol regulation and the role of state regulators combating underage drinking. As a result, new language recognizing the primacy of state—not federal—alcohol regulation, and specific mention of the role of state alcohol regulators, broadened the coalition behind this legislation. The House (twice) and the Senate passed the STOP Act and sent the legislation to the President before the 109th Session of Congress adjourned.

While the work to pass this historic legislation is complete, the efforts to properly implement the directives of this legislation are just beginning. The legislation has many components to address youth access to alcohol and underage drinking. Because the STOP Act was passed in the middle of a federal budget cycle, there were no new appropriations for this law. However, the Congressional sponsors of this legislation have made it clear that they will seek to fully fund the STOP Act through the course of the FY08 appropriations season. It is expected that the same coalition of industry partners, regulators and advocacy organizations will work with the Congressional supporters to help make this funding a reality.

SAMHSA has been given the chairmanship role of a permanent federal Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD) which has been in existence on an interim basis since 2004. It is hoped that the agencies impacted by the STOP Act can utilize existing appropriations to commence their mandates under the STOP Act. Moreover, the Annual Report of best practices by states will be a very useful tool for SAMHSA, as coordinator of ICCPUD, to coordinate federal efforts in this area to parallel and not frustrate state practices to address underage drinking.

III. Annual Report

III.A What the STOP Act says:

"In General- The Secretary of Health and Human Services (referred to in this section as the 'Secretary' shall, with input and collaboration from other appropriate Federal agencies, States, Indian tribes, territories, and public health, consumer, and alcohol beverage industry groups, annually issue a report on each State's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking. [The categories in developing performance measures identified in the STOP Act appear in Section IV, Role of Regulatory Agencies in the STOP Act, below.]

III.B Implementation Issues relating to Annual Report:

B.1 Inventory vs. Qualitative Assessment

The STOP Act recommends a comprehensive plan to address underage alcohol use that includes implementation and enforcement of state policies as well as prevention and educational programs. Given challenges in implementing all aspects of this plan, there may be a tendency to be satisfied if each state "checks a box" indicating that each of the specified laws, enforcement efforts and programs has been implemented. However, such an inventory approach to evaluating states' ef-

forts could ignore the differing qualities or components of policies and programs that increase likelihood of their effectiveness. The ultimate success of the STOP Act and other initiatives should be measured by reductions in underage alcohol use and related problems rather than in simply the number of policies or programs that states have implemented. An intermediate step is assessing whether implemented policies and programs targeting underage alcohol use include qualities or components that have been determined as necessary to ensure their effectiveness. Key features of policies and programs can be identified through the empirical research literature, theory and practice. Stopping at a simple inventory of policies and programs may lead to incorrectly assuming that states are sufficiently addressing underage alcohol use.

Recent assessments of two alcohol control policies indicate the importance of monitoring the quality of policies rather than just noting the presence of a law. In January 2001, 23 states had some type of law mandating or providing incentives for responsible beverage service training. Mosher and associates¹ identified five components of RBS laws (program requirements, administrative requirements, enforcement provisions, penalties for lack of compliance with law, and benefits for participation in training programs) and a scale of standards for each component. Comprehensiveness of RBS laws varied across states. While some states were strong on one or two components, most states had overall weak laws. All states were weak in at least one component. Only two states were identified as having relatively strong legislation. Similarly, In a review of 21 state-level keg registration laws, six components were identified as important (registration form content, keg tag content, keg deposit, education, penalties, and enforcement) and assigned scores based on their quality for a specific state. Adding the scores across components, all states had scores of 15 or less out of a maximum of 25 possible points. Two thirds had scores of 11 to 15. In other words, most states had relatively weak keg registration laws. Although keg registration laws have not yet been studied empirically, practically speaking, it is unlikely that keg registration laws will be effective if there is not a penalty for returning a keg in which the identification number has been removed. Most of the keg registration laws reviewed for this study did not include any penalty for removal of the identification number.

¹ Mosher, J.F.; Toomey, T.L.; Good, C.; Harwood, E.; and Wagenaar, A.C. State laws mandating or promoting training programs for alcohol servers and establishment managers: An assessment of statutory and administrative procedures. *Journal of Public Health Policy* (2002).

A first step towards monitoring the overall success of states in implementing quality policies and programs is to identify some of the key components that should be included for each type of policy and prevention program. A panel of researchers and practitioners could be assembled to help identify these components. Then, for the annual reports, states could report whether they had implemented a specific policy or programs, and if so, whether the policies and programs had included the recommended components.

B.2 Collection and Analysis of Performance Measures on State Underage Drinking Prevention and Enforcement Activities

The STOP Act requires that the Secretary of Health and Human Services present an annual report that contains a wide range of information regarding the performance of states in "enacting, enforcing and creating laws, regulations and programs to prevent or reduce underage drinking." Most of the data necessary to compile a list of the laws, regulations and programs is readily available from a variety of sources. But gathering law enforcement data, and establishing the meaning and consistency of that data, pose significant challenges.

Law enforcement is de-centralized

States are generally responsible for promulgation of laws, regulations and programs related to underage drinking. But the implementation and enforcement of these laws, regulations and policies—and thus the concurrent generation of statistical information related to these activities—are highly decentralized within a state and may be performed by city / town / county and / or state law enforcement agencies. Coordination between state and local alcohol law enforcement agencies, and activities, varies widely from state-to-state. Some states (for example, Illinois²) define and mandate specific requirements for localities. Other states have not defined specific standards for enforcement, consistent terminology or standardized practices. And in those states in which alcohol laws and regulations are also developed at the level of city / town or county, variability is certainly very high. Thus, data on alcohol law enforcement may be generated by multiple agencies throughout a state.

² www.ptb.state.il.us/publications/alcohol.pdf

The “quality”—i.e., the meaning and consistency—of law enforcement data is inconsistent

A Federal agency charged with the task of collecting enforcement information would find significant variance in the data between states and, in many cases, in the data from localities within specific states. This is true even in states that have centrally promulgated laws and regulations, as well as mandated requirements—in part because the relevant laws and regulations may not have been created and implemented with consistent protocols and requirements, and in part because a local community and its agencies have wide latitude in how they perform enforcement. For example, a "random compliance check" in one locality may differ substantially from a similarly named effort in another locality, even within a state. This variability, and the difficulties associated with interpreting and comparing underage alcohol sales compliance data, can be seen in a study performed in Wyoming to determine variables associated with compliance with underage drinking laws³. The study identified a wide range of different enforcement techniques that were employed throughout the state and their impacts on the enforcement results. The report correlates data from both "walk in" and "drive in" checks ("drive in" checks are not permissible in some jurisdictions), and whether checks were performed by individuals acting alone or performed with accompanying adults. Some communities performed compliance checks with minors and others with adults who appear to be minors. There was further variability in what types of establishments were included and what alcohol beverages the individuals were attempting to purchase. The different protocols for alcohol law enforcement employed within a single state, and the effects of these protocols upon compliance results, militate against consistent, coherent enforcement data even within a single state. The variability in protocols is, of course, far greater between states, highlighting the challenge of aggregating the enforcement data for the purposes of comparing states or informing policy.

Any effort to correlate information on a state-wide or national basis will require a *definition* for each activity. For the purpose of preparing the STOP Act annual report, the definition of these elements is critical for establishing the "data model" for the report (the information on the report and the information used to derive that information). Establishing common baseline definitions for enforcement activities is challenging but necessary. Methodologies established by the Dept. of Justice or other agencies for assembling uniform crime statistics may be useful.

³ uwyo.edu/wysac/content/Alcohol%20Compliance%20Survey%20Report.pdf

The Mechanics of Data Collection

The actual data collection process creates a number of issues. Responsibility for the completion of the data collection instruments, even within a local jurisdiction, may often be distributed among different parties and may be more or less coordinated depending on the characteristics of each state and locality. Accordingly, the collection of enforcement statistics may be similarly challenging to coordinate even when using standardized definitions of those activities, and communicating them in a way that is easily understood by all.

While assuring that everyone is collecting the same type of data is the initial challenge, collecting data to the same quality (or "depth") is another. Some actors are inherently more likely to provide detailed data than others. This would create challenges in compiling summary statistics on a state or national level (or even a local level in some cases). In order to minimize the likelihood of this variance, it is critical to reduce the statistics requests to the bare minimum required—and to assure that each enforcement element is reported statistically with the minimum amount of information necessary to compile relevant summary results. This is best accomplished through significant analysis of the summary statistical requirements.

Implementation

One enormous challenge to implementation of a state reporting system would be the reluctance or unwillingness of states, their agencies and local enforcement agencies to collect and relay data to the federal government. The STOP Act can be seen as an unfunded mandate; and the preparation, collection and transmission of data represents no small commitment of resources. Without the cooperation and participation of local and state organizations, the reporting of data relating to measures of combating underage drinking breaks down.

Many of the law enforcement and state agencies, however, may be under a mandate to *benchmark* their activities and measure their performance from year to year and / or in comparison to other similar agencies. The data collection and reporting established by the implementation of the STOP Act would satisfy the need of state and local agencies to measure and evaluate performance relating to combating underage drinking. Implementation of the STOP Act may be greatly abetted by demonstrating the value to state and local agencies of a straightforward model for col-

lecting and reporting performance data. Providing the agencies with a data collection / reporting protocol that doubles as a management information tool for that agency would be a strong incentive for active participation. Receiving reports and comparisons across the state and nationally might serve as an additional incentive for agencies to collect and report data.

The best way to induce cooperation from enforcement organizations in the necessarily complex and expensive process of defining and systematizing the collection of the relevant information is to provide these organizations with the ability to measure their own enforcement and to determine how and where to make improvements. There is a reasonable argument that if an enforcement or state agency is not already collecting this information, then the implementation of data collection under the STOP Act could lead to improvements in operational efficiency; and the costs of collecting and transmitting relevant data would be more than offset by potential long-term benefits to the agencies.

IV Role of Regulatory Agencies in STOP Act

Under the STOP Act, the Secretary of Health and Human Services is directed to produce an annual report on each state's performance in enacting, enforcing and creating laws, regulations or programs to prevent or reduce underage drinking. This section of the Act is especially important to those responsible for alcohol regulation and policy of individual states. Among the many state activities that the legislation directs to be considered for inclusion in the report are:

- Whether a state has comprehensive anti-underage drinking laws, including illegal purchase, illegal consumption, illegal possession, illegal use of fraudulent ID and the degree of strictness of penalties for such offenses;
- Whether a state has comprehensive liability laws relating to underage access to alcohol such as dram shop, social host and "house party" laws and the prevalence of enforcement of these practices;
- Whether a state encourages and conducts comprehensive enforcement efforts at retail outlets;
- Whether a state encourages alcohol server training;
- Whether a state has policies and regulations with regard to direct sales to consumers and home delivery of alcohol;

RRForum Report to SAMHSA on STOP Act Implementation

- Whether a state has programs or laws to deter adults from purchasing alcohol for minors;
- Whether the state has programs targeted to youths, parents and caregivers to deter underage drinking and the number of individuals served by this program
- Whether a state has compliance check programs in retail outlets, graduated drivers licenses, checkpoints and other drunk driving countermeasures and community-based, school-based and higher education-based programs to prevent underage drinking; and
 - The amount that each state invests, per youth capita, on the prevention of underage drinking, to include: compliance check programs; providing technology to prevent and detect the use of false identification by minors to make alcohol purchases; checkpoints and saturation patrols; community-based, school-based, and higher-education-based programs to prevent underage drinking; underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and other state efforts or programs as deemed appropriate.

Many of the above provisions that would be reported under the STOP Act would come under the purview of the agencies responsible for the regulation and enforcement of alcohol laws in the individual states. For this reason, the beverage alcohol regulatory community becomes an important source of the information that would be reported or documented to carry out the provisions of the STOP Act. These regulatory agencies will also be able to provide information on the actual implementation of regulation and laws, rather than simply providing data and the specific language of regulation and laws. As such, alcohol beverage regulators should be considered one of the central, and in some cases the lead, state agency in reporting on efforts in their states to meet the STOP Act's reporting provisions.

The STOP Act also provides a clear statement of the authority of the state with respect to regulation and control of beverage alcohol:

(7) Alcohol is a unique product and should be regulated differently than other products by the States and Federal Government. States have primary authority to regulate alcohol distribution and sale, and the Federal Government should support and supplement these State efforts. States also have a responsibility to fight youth access to alcohol and reduce underage drinking. Continued State regulation and licensing of the manufacture, importation, sale, distribution, transportation and storage of alcoholic beverages are clearly in the public interest and are critical to promoting re-

RRForum Report to SAMHSA on STOP Act Implementation

sponsible consumption, preventing illegal access to alcohol by persons under 21 years of age from commercial and non-commercial sources, maintaining industry integrity and an orderly marketplace, and furthering effective State tax collection.

This statement is an important acknowledgement that alcohol is a unique product that requires that states address their unique circumstances and take responsibility for reducing youth access to alcohol. It also suggests that regulatory authorities should have as a core principal the reduction of underage drinking and that others in the state recognize the importance and value of regulatory agencies in this issue.

The STOP Act includes four separate funding authorizations totaling 18 million annually for fiscal years 2007, 2008, 2009, and 2010 and are allocated for federal activities related to reporting requirements of the Act; an annual National Media Campaign to Prevent Underage Drinking; additional grants for research of Underage Drinking; Community-Based Coalition Enhancement Grants to Prevent Underage Drinking; grants directed at preventing and reducing alcohol abuse at institutions of higher education. It is important to note that these are only authorizations and additional legislation allocating funds would be necessary before funds become available for use. Whether funds become available or not, there are important considerations for those interested in preventing underage drinking and alcohol abuse as they report on progress, pursue research, develop media campaigns, enhance community coalitions, and develop statewide coalitions/initiatives. Changing the environment to reduce underage drinking requires work in three domains:

- increasing the effectiveness of enforcement
- changing the social / cultural norm
- decreasing access to alcohol

All three strategies are critical but for purposes of the Responsible Retailing Forum and how the work of the RRF relates to the implementation of the STOP Act, this discussion will focus on reducing access.

Retailers play an important role in reducing access of alcohol to underage persons. The Responsible Retailing Forum has an opportunity to reduce access by determining and promoting practices by retailers that reduce access to alcohol by minors. The research, trials, workshops and discussion that take place as part of the RRF serve to deepen our knowledge and suggest

interventions and actions that retailers and communities can take to accomplish the goal of reduced access. This also suggests that as communities and states consider their coalitions and the stakeholders that can accomplish this reduction in access, retailers should be part of such coalitions and they should be actively engaged in such initiatives.

This strategy also requires that regulators play a central role with coalitions and initiatives because they are the state entities that established and oversee the regulations that governs retailer behavior. In addition they are responsible often for the enforcement and interpretation of such regulation. If we hope to institutionalize best practices for reducing access, regulatory agency leadership is critical. If regulators understand what practices and regulation truly have an impact on reducing access, they play a powerful role in reducing access to alcohol by minors.

State regulator input is especially important in the STOP Act's provision that calls for the Department of Education to fund entities to address alcohol abuse at institutions of higher education. In the definition of how these funds are to be used, there is a clear intent to enhance or build statewide coalitions to address this issue. It is important that these coalitions involve stakeholders that understand and will assist in changing the environment in and around our colleges. As discussed earlier, reducing access to alcohol by underage persons and decreasing irresponsible use of alcohol are efforts in which regulators and retailers can play valuable roles. More information on statewide initiatives or coalitions and their value can be found in see the article, "Statewide Initiatives for Prevention," at <http://www.higheredcenter.org/pubs/articles/statewide-efforts.pdf> .

If we hope to reduce underage access to alcohol, it is important to employ strategies that will change our states' environments that allow underage drinking to occur. State regulators play a central role in these efforts. In addition, retailers need to be engaged to address commercial access in the community. If this is the case, then regulators must help lead their states in implementing the STOP Act provisions; and retailers, along with distributors and suppliers, must be part of local and state coalitions to address underage drinking and alcohol abuse.

V. STOP Act Report Committee

This STOP Act Report was prepared by a committee of RRForum participants consisting of:

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RRForum Report to SAMHSA on STOP Act Implementation

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