

DECOY SHOULDER TAP PROGRAM

Procedure Manual for Law Enforcement



DEPARTMENT OF
ALCOHOLIC BEVERAGE CONTROL

FOREWORD

This procedure manual has been prepared by the Department of Alcoholic Beverage Control (ABC) for use by local law enforcement officers as an easy-to-use guide for shoulder tap operations. This is merely a guide and is not intended to supersede local law enforcement agency policies.

This manual provides recommendations on how to implement a Decoy Shoulder Tap Program, from identifying resources to evaluating the program's success.

It is ABC's hope that local law enforcement agencies will find this manual useful in complementing their existing enforcement efforts.

Department of Alcoholic Beverage Control

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THE LAW: Business and Professions Code

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of a fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine of one thousand dollars (\$1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, or other persons who sell or furnish alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given to licensees and the department within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution or the imposition of penalties under any other provision of law, including, but not limited to, Section 272 of the Penal Code and Section 13202.5 of the Vehicle Code.

PROGRAM DESCRIPTION

The Decoy Shoulder Tap Program is an enforcement operation that uses minor decoys to identify people who furnish alcoholic beverages to minors¹ outside ABC licensed establishments.

It is a misdemeanor to furnish alcoholic beverages to minors and any persons observed furnishing alcoholic beverages to minors are subject to arrest pursuant to Section 25658(a) of the Business & Profession Code.

The local law enforcement agencies that have used the Decoy Shoulder Tap Program have had significant results.

¹ “Minors” means persons under the age of 21

Step 1: Identify Resources

Determine the personnel, equipment and materials required. Depending on operational objectives, a typical shoulder tap operation normally runs between four to eight hours. In addition to the minor decoy, it is recommended that at least three officers are utilized, with one assigned to decoy safety. ABC resources are available to assist in joint task force operations.

Recommended Personnel:

Uniform officer
Plain clothes officers
Minor decoy

Recommended Equipment:

Marked patrol vehicle
Undercover vehicle
Wireless voice transmitter
Recording device
Buy money
Camera
Evidence bags/labels

Step 2: Gain Program Support

Contact the local District or City Attorney's Office to discuss program and determine any specific prosecutorial requirements. Encourage prosecution of furnishing alcoholic beverages to minors to the fullest extent of the law. Business & Professions Code Section 25658(e) (2) provides for a minimum \$1,000 fine plus 24 hours community service.

It is suggested, where appropriate, that the police officer or local prosecutor contact the presiding judge of the court to explain the objectives of the program and the minimum penalties for a conviction of furnishing alcoholic beverages to minors.

Step 3: Identify Target Locations

The Decoy Shoulder Tap Program has the best effect when used:

- In areas where minors have resorted to the Shoulder Tap method of obtaining alcohol rather than buying it.
- High traffic areas where youths congregate
- Contact local Alcoholic Beverage Control district offices to identify any problem licensed premises.

To assist in developing intelligence the following may be helpful for an effective Shoulder Tap Operation:

- Talk to parents who report to law enforcement that their child has obtained alcohol.
- Contact officers assigned to local high schools who may know how and where students obtain their alcohol.
- Contact officers who may have observed minors' activities or interviewed minors relating to alcohol matters. These officers may have information on how and where minors are getting alcohol.

Step 4: Media Advocacy

One of the most effective uses of the media is to publicize enforcement. Many adults are not aware of the seriousness of furnishing alcoholic beverages to minors. The publicity of those arrested sends a strong message to those who may be inclined to provide a minor with alcoholic beverages.

Law enforcement officers may have experienced the frustration of “the media” not getting the story right. Media advocacy is an approach that is more proactive. Rather than waiting passively for the media to “get it right”, you participate in the process.

Action Steps

- Issue news releases as follows: (a) one to announce the start of program; (b) one to summarize the results of the operation to announce the number of arrests.

- Fax or email a copy of each news release to ABC, attention Public Information Officer, as soon as it is released. ABC will assist, if needed, in preparing a news release and will lend support with the resources of a Public Information Officer.
- Respond to calls from reporters
- Initiate calls to reporters
- Design good visual images for television reporters
- Hold media events in cooperation with ABC
- Develop good working relationships with editors and producers

It is recommended that news releases, media contacts, media events, and/or visual materials should be used where appropriate. Working with the media in a proactive manner while conducting the operation will be helpful in disseminating information to the public.

Step 5: Select Decoy

While strict requirements (i.e., Rule 141) only apply to minor decoys, the selection of decoys for use in shoulder tap operations is an important component.

- Check with the local prosecutor to determine if they have any specific age requirements
- Use decoys who are under 21 years of age
- Decoys should have the appearance of someone under the age of 21
- Refer to the local law enforcement agency's policy on use of non-agency personnel in such operations and any waiver requirements

In addition, the following criteria are suggested:

- The decoy should be willing to conduct undercover work
- The decoy should be willing to wear a wireless voice transmitter and have their conversations recorded

- The decoy should have the ability to prepare written statements of their involvement
- The decoy must be willing to testify in any court proceedings resulting from the program
- The decoy should be informed that being involved in a Decoy Shoulder Tap Operation may result in media attention
- Obtain signed parental release form for any decoy under age 18

Step 6: Training/Operation

To help ensure successful prosecution and maintain safety of the decoy, certain operational procedures should be followed. The decoy should also be instructed on situations they may possibly encounter.

Action Steps

- The minor should always be under the direct supervision of a law enforcement officer
- It is recommended that the minor makes an age related statement to the adult they solicit
- Check with local prosecutor agency if they have any specific age related requirements
- Equip minor with a wireless voice transmitter to have their conversation recorded for evidence.
- Decoy should only solicit the potential subject once. Upon an initial refusal, decoy should cease any further solicitation.
- Decoy must not befriend, beg, plead or otherwise entice the potential suspect with significant reward.
- If the adult furnishes alcoholic beverages to the minor, the minor should walk away to a pre-designated location. The adult should be allowed to move away from the minor before being contacted. This gives added security for the minor's protection

- Before issuance of citation, verify an alcoholic beverage has been purchased for the decoy.
- Suspect may be released on a misdemeanor citation for violation of Section 25658 (a). If the situation warrants, book the suspect into jail.

Step 7: Decoy Safety

The safety of all minors and officers used in the Shoulder Tap Operation is of paramount importance. Research shows that over 25% of those arrested are either on probation, parole, have warrants or are under the influence at the time of arrest.

Action Steps

- Have enough cover officers for the location/area
- Survey the location prior to the operation
- Instruct decoy to never enter a vehicle with a suspect and to never leave the area on foot to follow the suspect
- Instruct the decoy to stand near the front of a location in a well lit area
- Always have decoy stand in an area visible by officers
- Immediately terminate any operation that you feel is not safe
- Be aware of vehicles approaching the decoy or getting in between officers and the decoy
- It is not uncommon for decoys to be offered other items such as drugs. While it is not the intent of shoulder tap to encourage or engage in such activities, the decoy should be instructed on how to respond in such situations pursuant to the local law enforcement agency's policy
- Decoy should remain secure in the vehicle until the suspect has been cited and released

Step 8: Reporting

The report should contain the following information and exhibits:

Action Steps

- A detailed summary of the investigation and observations made by the arresting investigator or officer of the furnishing violation
- If the transaction is unable to be heard clearly, obtain a supplemental statement from the minor regarding his or her observations
- It is recommended that a color photo of the suspect be taken and a color photo of the alcohol, if it is not seized for evidence, also be taken.
- Unlike the Minor Decoy Program, a face to face identification is *not* required.
- Details on the suspect; e.g., whether the adult suspect profited from the violation (i.e., asked for extra money from the decoy); whether the suspect was intoxicated; whether a PAS device was used and the results; and statements made by the suspect at the time of arrest after Miranda (i.e., “why did I do it”).
- A supplemental report may be needed from decoy if an unusual situation arises

Step 9: Evaluation

The program’s success can be measured quantitatively by the number of persons who furnished over those who did not over a specific period of time.

Further quantitative measures include the number of arrests; the number of suspects booked versus released on misdemeanor notices to appear; and the age of the arrested suspects.

Action Steps

- Track and record statistics
- The number of contacts made by decoy and number of arrests made during the operation should be documented. This information is useful for future press releases.

Frequently Asked Questions

Question 1: Can the decoy offer the suspect additional money to get the alcoholic beverage?

Answer: In order to avoid any entrapment issues, the decoy should never offer the suspect additional money. However, if the suspect inquires about receiving compensation (money, food, and/or alcoholic beverage) the decoy should not engage in negotiation but may state that the money they have is all that is available.

Question 2: Does the operation (transaction between suspect and decoy) have to be recorded?

Answer: There is no legal requirement to record the transaction; however, it may be a requirement for a successful prosecution through your local district attorney.

Question 3: Do the alcoholic beverages have to be seized as evidence?

Answer: Refer to your local departmental policy and your district attorneys' office. If it is not required for you to take as evidence, a picture should be taken of the alcoholic beverage for your report.

Question 4: Can a decoy that is under the age of 18 years old be used for an operation?

Answer: Yes, there is no legal requirement for the age of decoys; however, you should refer to your local departmental policy.

Question 5: Can a decoy that is 20 years old be used for an operation.

Answer: Yes, the law states that it is against the law to furnish an alcoholic beverage to a person under the age of 21; however, you should refer to your local departmental policy and your local district attorneys' office, because they may require the decoy to be a certain age.

Question 6: Does the furnisher have to physically give the alcohol to the decoy?

Answer: No. Often times the furnisher will simply walk past the decoy and place the alcohol on the ground or even placing it in a trash can. Once the decoy has taken possession of the alcohol the act of furnishing is complete.

Question 7: Can the decoy solicit other minors to purchase him/her alcoholic beverages?

Answer: Yes. The decoy should be non-discriminatory in their contacts. Should the situation arise where a minor is able to purchase and then furnish alcohol to the decoy, the licensed location could face disciplinary action by the Department of Alcoholic Beverage Control. See ABC enforcement manual regarding sales to minor violations.

Question 8: What happens if a licensee or employee is directly involved in the furnishing of alcoholic beverages to the minor decoy?

Answer: If it can be established that the licensee/employee was directly involved in (or had direct knowledge of) the furnishing of the alcoholic beverage to the minor decoy, the licensed premises could be held liable. If applicable, the licensee/employee could be cited for violation of Section 25658(a) B&P; Causing Alcohol to be Sold or Furnished to a Minor. It could also be possible for ABC to take administrative action against the licensed premises. In addition to pursuing criminal action with the local prosecutor, a copy of the criminal report should be forwarded to the local ABC office. In such cases the report should clearly articulate the involvement or knowledge of the licensee or employee.

Question 9: Does Rule 141 of the California Code of Regulations apply to Shoulder Tap Operations?

Answer: No. Rule 141 is only applicable during Minor Decoy operations.

Question 10: Does a face to face identification need to take place between the minor decoy and the furnisher?

Answer: No. There is no reason the suspect should have contact with the decoy after officers have detained the suspect. Every effort should be made to protect the identity and safety of the minor decoy.