

DEKALB POLICE DEPARTMENT

Subject: **Alcohol and Tobacco Compliance Checks**

Policy #: **402.11**

Effective Since: 8-21-03

Revision Effective: 1-1-19

Reference Material: State "Model Policy and Guidelines" manual

ILEAP Standards Covered: NA

FTO Training Task: # 49

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PURPOSE: The purpose of this policy is to outline the procedures for alcohol and tobacco compliance operations to investigate whether a licensee is furnishing alcoholic liquor to persons under 21 years of age or tobacco to persons under 18 years of age, in violation of State law and City ordinance. This policy is adopted as required in 235 ILCS 5/6-16.1(b), from Illinois Public Act 92-0503.

POLICY: It is the policy of the department to uniformly enforce state and local alcohol and tobacco regulations. Compliance checks will be performed in accordance with the procedure set forth in this policy, as promulgated by the Illinois Law Enforcement Training and Standards Board. The Compliance Operation involves the use of minors in conducting a controlled buy operation under the direction of supervising officers. Because of the risks and negative effects of alcohol and tobacco use by minors, the department employs this Compliance Operation of enforcement and positive reinforcement to seek voluntary compliance by licensees.

CITY ORDINANCES; the following is a non-exclusive list of applicable City ordinances:

11.07(e), Illegal Distribution of Cigarettes or other Tobacco Products: "No manufacturer, producer, distributor, wholesaler, or retailer of cigarettes or other tobacco products, or any agent, employee or representative [of such] shall do any of the following: Give, sell, or otherwise distribute cigarettes or other tobacco products to any minor."

38.21(c), Unlawful Sale of Alcoholic Liquor to a Minor: "No licensee shall sell or permit to be sold through his employees or agents any alcoholic liquor at retail to any person under the age of 21 years old."

38.21(e), Unlawful Giving of Alcoholic Liquor to a Minor: "Any person under the age of 21 shall not be given or permitted to drink any alcohol liquor in or upon the premises licensed for the sale at retail of alcoholic liquor."

DEFINITIONS:

Licensee: Holder of a state and/or local license to sell alcoholic beverages and/or tobacco.

Official Identification: Picture identification issued by the State of Illinois in the form of a driver's license or State ID card.

Compliance Check Officer: any officer assigned to the controlled buy operation to oversee the special agent.

Compliance Operations Supervisor: the officer in charge of the compliance operation; not necessarily a ranking member of the department. The Compliance Operations Supervisor oversees the administration of the program; when the program is being operated, the Shift Commander is the ranking supervisor, unless another ranking supervisor is participating in the operation.

Special Agent: A volunteer under the legal age used by the department to attempt purchase of alcohol or tobacco products under the controlled buy operations.

PROCEDURES:

I. General Operations

A. The department will designate an officer to administer the general operations of the Compliance Operations.

B. Compliance check scheduling:

1. Any licensee within the city limits is subject to a compliance check.
2. Compliance checks will be conducted on a routine and random basis.

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3. A compliance check may be directed specifically to an establishment that has been reported to sell to minors or has a documented history of sale to minors.
4. The department may issue a news release, describing the purpose and process of the Compliance Operation, including possible penalties for violators. An additional news release may be issued, indicating the results of the Compliance Operation.
- C. The Compliance Operations supervisor will:
 1. Maintain records of all compliance checks, to include:
 - a. the date of the check
 - b. the licensee that was checked
 - c. whether or not a violation occurred
 2. Provide upcoming schedules of compliance checks if so requested by a superior.
 3. Oversee special agent selection.
 4. Ensure that officers participating in a controlled buy operation have been trained.

II. Special Agent Selection

- A. Special agents must be approved by the Compliance Operations supervisor and/or the Patrol Commander.
- B. Tobacco enforcement special agents will be between 14 and 17 years of age.
- C. Liquor enforcement special agents will be between 18 and 20 years of age.
- D. Special agents must meet the following requirements:
 1. Have a good reputation and character.
 2. Have no record of liquor or tobacco-related violations.
 3. Have no prior attempts to unlawfully purchase liquor or tobacco items.
 4. Have the appearance, demeanor, and mannerisms consistent with their age.
 5. Have clothing appropriate for their age group.
 6. Must not have facial hair, wear makeup, or other items that would make them appear older than their actual age.
- E. A background check should be performed to:
 1. Verify the birth date of the special agent.
 2. Confirm the lack of a criminal history.
 3. Ensure the special agent's good character.
- F. Special agents under the age of 18 must have a parent complete a Parental Consent Form prior to the operation date.
- G. Special agents over the age of 18 must complete a Special Agent Consent Form.
- H. The special agent should have a schedule that would allow their appearance at hearings or in court if required.

III. Special Agent Briefing

- A. Before conducting a Compliance Operation, the Special Agent shall be briefed as to the purpose, scope, and procedures of the operation.
- B. A Compliance Check Officer must approve of the special agent's appearance as set forth in the requirements previously listed in this policy.

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- C. A Compliance Check Officer must ensure that the appropriate Consent Form has been signed:
 - 1. Parental consent form for Special Agents under 18 years of age.
 - 2. Special Agent consent form.
- D. A Compliance Check Officer should take a photograph of the Special Agent and ensure that his appearance and clothing do not change after the photograph is taken. The photograph is to be kept on record.
- E. A Compliance Check Officer should ensure that the Special Agent has only a State driver's license or ID to be used for identification purposes during the Compliance Operation.
- F. A photocopy of the ID should be made and kept with the Operations records.
- G. The Special Agent will be instructed:
 - 1. To go directly to the targeted merchandise and then directly to the check-out;
 - 2. That at no time should he try to persuade the licensee/clerk to complete the sale;
 - 3. That he should speak to the licensee/clerk only as necessary;
 - 4. If asked about his age, he is to reply with his correct age;
 - 5. If asked for ID, he is to present only his actual State driver's license or ID;
 - 6. If a transaction is completed, retain the receipt if provided.
 - 7. That the success of the operation and/or his continued use as a Special Agent is not dependent on making successful purchases.

IV. Conducting a Compliance Operation

- A. Prior to conducting a Compliance Operation, the Special Agent must be briefed as outlined in Section III. The Compliance Check officers may request that the Special Agent practice the operation by creating mock scenarios.
- B. Cash from the petty cash fund will be used, unless previously designated from another source. Use of the cash should be documented on the petty cash form.
- C. A compliance operation may employ the use of more than one Special Agent.
- D. A compliance operation will usually employ the use of two Compliance Check Officers: one to view the transaction and one to remain in the vehicle at all times.
- E. The Compliance Check Officers will normally be in plain clothes.
- F. A Compliance Check Officer should drive an unmarked police vehicle and always provide transportation for the Special Agent.
- G. A Compliance Check Officer should position himself inside the establishment so as to be able to view the transaction take place. In a particularly small store, the Compliance Check Officer may elect to view the transaction from outside.
- H. The Special Agent should appear to be alone; the Special Agent and officer should not enter together. The Compliance Check Officer should enter first and have the Special Agent enter a short time thereafter.
- I. One officer should remain in the vehicle at all times, so as to never leave the Special Agent alone and to provide surveillance of the outside of the establishment.
- J. A Compliance Check Officer can and should terminate the operation at any time if unsafe situations arise.
- K. The Compliance Check Officer should designate a specific product the Special Agent is to attempt purchase of.

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- L. Normally, the clerk/seller will be issued a Notice to Appear City Ordinance Complaint on-scene for the applicable violation.
- M. Upon completion of a Compliance Operation, the Special Agent should be debriefed; the operation should be discussed to determine any suggestions, concerns, or constructive information the Special Agent or supervising officers may have.

V. Completed Transactions

- A. If a controlled buy is completed at a **tobacco dealer or package liquor establishment** :
 - 1. The Special Agent should always exit the establishment immediately and give the purchased item and receipt (if obtained) to the officer in the police vehicle.
 - 2. The Special Agent should re-enter the establishment and positively identify the person who completed the sale to the supervising officer.
 - 3. The Compliance Check officer should then identify himself and ask to see the on-duty manager. The Compliance Check Officer will then explain the violation to the manager, with the Special Agent present, and answer any questions pertaining to the transaction.
 - 4. The officer will issue a city ordinance complaint to the clerk/seller for the applicable violation.
 - 5. The item(s) purchased will be retained as evidence and logged as such.
- B. If a controlled buy is completed **inside a bar or restaurant for non-packaged alcohol sales** :
 - 1. A Compliance Check Officer will always be inside.
 - 2. The compliance check should not be conducted at a period of peak activity, when the bar area is crowded with patrons.
 - 3. When served, the Special Agent will not consume any alcohol beverage.
 - 4. The Special Agent will signal the Compliance Check Officer, who will confirm the beverage as being alcoholic from its appearance and odor.
 - 5. The Compliance Check Officer should identify himself and ask to see the on-duty manager. The officer will explain the violation, with the Special Agent present, and answer any questions pertaining to the transaction.
 - 6. The Compliance Check Officer will issue a city ordinance complaint for Unlawful Sale of Alcohol to a Minor to the clerk/seller.
 - 7. The full container of alcoholic beverage should be photographed; the beverage can be discarded, with the photograph being logged into the department's evidentiary photo file.

VI. Reporting

- A. The Compliance Check Officer(s) will complete a case report when a transaction has been completed.
- B. Case reports, with the appropriate copy of the city ordinance complaint, will be forwarded to the City Attorney after supervisor review.

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- C. The Compliance Operations supervising officer will keep record of each Compliance Check, whether or not a transaction was made. This record will be forwarded to the Patrol Commander upon completion of each Compliance Operation.
- D. The department may issue a Commendation Letter to establishments that did not complete an illegal transaction to the Special Agent.

Policy originally issued 8-21-03; this revision becomes effective on 1-1-19 by authority of the Chief of Police .

NOTE: This policy and procedure summarizes the department's position on this specific matter. This policy is for general direction and guidance primarily designed for use by the department's members. This policy is for internal use only and does not create or enlarge an officer's liability in any way. This policy shall not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of an internal departmental complaint and then only in a non-judicial administrative setting.

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SPECIAL AGENT CONSENT FORM

I, _____, am voluntarily agreeing to assist the Dekalb Police Department in a controlled buy operation for tobacco and/or alcohol. I am doing this freely and not part of any plea agreement or in lieu of any other legal action.

In consideration of the foregoing, the undersigned hereby releases and holds the City of Dekalb, its Police Department, its officers and/or its employees, harmless from any and all liability, causes of actions, suits, injuries, damages or demands of whatsoever nature arising out of the operation of the City of Dekalb Police Department. In addition, the undersigned intends, by executing this release and hold harmless, to waive all claims whatsoever the undersigned has or may have in the future against the City of Dekalb, its Police Department, its officers, and/or its employees.

I understand that my participation in this controlled buy operation does not endow me with any police powers, and I will not take enforcement action of any kind, including, but not limited to: arrest, search, seizure of property, or use of restraints unless directed to do so and in the immediate aid of a Police Officer.

When participating in the controlled buy operation, I understand and agree to strictly abide by the procedures set forth by the Police Department through enforcement officers of the controlled buy operation.

I understand I may be requested to appear in administrative proceedings before the City of DeKalb Liquor Commission and/or court proceedings before a judge of the 16th Judicial Circuit Court of Dekalb County and will comply with any notice to appear.

Special Agent Signature: _____

Date: _____

Officer's Signature: _____

**PARENTAL CONSENT FORM
REQUIRED FOR SPECIAL AGENTS UNDER 18 YEARS OF AGE**

I, _____, a legal parent of

Do hereby give permission for my son/daughter to participate in a City of Dekalb Police Department controlled buy operation for tobacco and/or alcohol. I understand that my son/daughter, acting as a Special Agent of the Department, will be attempting to purchase items that normally cannot be legally sold to minors.

In consideration of the foregoing, the undersigned, on behalf of myself and my son/daughter, hereby releases and holds the City of DeKalb, its Police Department, its officer and/or its employees, harmless from any and all liability, causes of actions, suits, damages or demands of whatsoever nature arising out of the operation of the City of DeKalb Police Department. In addition, the undersigned intends, by executing this release and hold harmless, to waive all claims whatsoever the undersigned and/or my son/daughter has or may have in the future against the City of Dekalb, its Police Department, its officers, and/or its employees.

I understand that the participation of my son/daughter does not give them any police powers or the authority to take any enforcement action. I understand that they will be directly supervised at all times by a Police Officer.

I understand my son/daughter may be requested to appear in administrative proceedings before the City of Dekalb Liquor Commission and/or court proceedings before a judge of the 16th Judicial Circuit Court of Dekalb County and will cooperate in making my son/daughter available for any such appearance.

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Parent Signature: _____

Date: _____

Officer's Signature: _____

CHECKLIST FOR COMPLIANCE CHECKS

- A. Minor on premises
1. Was there a doorman/bouncer present? If so, name, address, etc.
 2. Did the doorman/bouncer check IDs? Procedure or equipment?
 3. Where is minor located in premises? If restaurant, was minor served food?
 4. Is minor with parent or guardian?
 5. Was minor served alcohol?
 - i. If so: description and quantity of alcohol served.
 - ii. Where in premises was minor served?
 - iii. Minor's condition?
 6. If served, which employee served? Name, address, etc. Did server card minor?
 7. Was an ID produced by minor to doorman/bouncer/server?
 - i. If so, where is it? Copies by licensee?
 - ii. What kind of ID? Is ID altered?
 - iii. Did description on ID match the minor's appearance?
 8. Did licensee's employee demand to see ID? Minor's response?
 9. Did minor drink anywhere else?
 10. Licensee employees' aware of minor on premises?
 11. Does licensee have written procedure or equipment used to check/copy IDs? If so, describe. Are there any written logs, videotapes or other records of ID checks kept by licensee? If so, get originals. Also, get name, address of licensee's employee who generated the record.
 12. Was warning sign posted? Where?
- B. Minor in Possession of Alcohol/Minor Consuming Alcohol
1. Was there a doorman/bouncer present? If so, name, address, etc.
 2. Did the doorman/bouncer check IDs? Procedure or equipment?
 3. Where is minor located in premises? If restaurant, was minor served food?
 4. Is minor with parent served?
 5. What was minor served?
 - i. Description and quantity of alcohol served. Is alcohol still present? Describe.
 - ii. Where in premises was minor served?
 - iii. Minor's condition? Smell alcoholic beverage? Eyes? Balance? Speech?
 6. Which employee served? Name, address, etc. Did server card minor?
 7. Was an ID produced by minor to doorman/bouncer/server?
 - i. If so: where is it? Copies by licensee?
 - ii. What kind of ID? Is ID altered?
 - iii. Did description on ID match the minor's appearance?
 8. Did licensee's employee demand to see Id? Minor's response?
 9. Did minor drink anywhere else?
 10. Licensee employees' aware of minor on premises/possession/consumption?
 11. Does licensee have written procedure or equipment used to check/copy IDs? If so, describe. Are there any written logs, videotapes or other records of Id checks kept by licensee? If so, get originals. Also, get name, address of licensee's employee who generated the record.
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Be as thorough and complete in your report as possible. THERE IS NO SUCH THING AS "TOO MUCH" INFORMATION!