



Photo by Mike Taheri

New Topics in Criminal Law

Everyone knows that in New York State, it is against the law to sell alcohol to anyone under twenty-one years of age, and it is likewise illegal for individuals under twenty-one to possess any alcohol with the intent of consuming it. A seldom noted provision of this law, however, reveals that there is an exception allowing those under twenty-one to be served and to consume alcohol.

Alcohol Beverage Control Law section 65-c[2](b) provides that a person under the age of twenty-one “may possess an alcoholic beverage with the intent of consuming it if it is given to him or her by his or her parent or guardian.” Likewise, while Penal Law section 260.20[2] bars giving or selling alcohol to a person under the age of twenty-one, it specifically states that “this subdivision does not apply to the parent or guardian of such a person....”

As a result, as long as it is kept “in the family,” it is currently *legal* for minors to consume alcohol with the permission of their parents. Although it is legal, parents need to be cautious when it comes to providing alcohol to their minor children. In the case of *People v. Garbarino*, 152 AD2d 254 (3rd Dept. 1989), *lv. denied*, 75 NY2d 919 (1990), the Court ruled that the parents of a 15 year old boy could be prosecuted on charges of Criminally Negligent Homicide, Reckless Endangerment in the Second Degree, and Endangering the Welfare of a Child when they encouraged their son to drink so much it resulted in his death.

While few parents would engage in such behavior, the court specifically noted when addressing the relevancy of the charge of Endangering the Welfare of a Child (a class A misdemeanor) that the parental exemption “was clearly designed to avoid the prosecution of parents or guardians who provide minimal amounts of alcohol only,” *Garbarino* at p. 259. As a result, it may be inferred that parents who allow their children to drink more than a minimal amount of alcohol, *e.g.*, allow drinking to the point of intoxication, may be subject to criminal charges such as Endangering the Welfare of a Child.

Moreover, the New York State Legislature is currently considering bills that would amend the law related to the providing of alcohol to minors. While the bills currently being considered do not eliminate the parental exemption, parents and guardians may be specifically required to ensure that their children do not drive for a minimum of twelve hours after consuming alcohol. Failure to do so would open the individual who provided the alcohol to potential criminal prosecution ranging up to a charge of Reckless Endangerment in the First Degree, a class D felony.

Also, while parents may provide alcohol to their own children, this exception does not apply to their children’s friends. Providing alcohol to other minors may result in a charge of Unlawfully Dealing with a Child in the First Degree, which is a class A misdemeanor carrying penalties of a fine up to \$1000, up to a year in jail, and up to three years of probation,

While these penalties are currently in place to bar the providing of alcohol to other people’s children, it would appear that, absent action by the legislature, parents can “crack” the proverbial beer with their children and not face criminal prosecution.

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