

FURNISHING ALCOHOL TO A MINOR

G.L. c. 138, § 34

The defendant is charged with furnishing alcohol to a minor.

In order to prove the defendant guilty of this offense, the Commonwealth must prove four things beyond a reasonable doubt:

***First:* That the defendant knowingly or intentionally supplied, gave, or provided a beverage to someone, or allowed someone to possess a beverage on premises or property owned or controlled by the defendant;**

***Second:* That the person to whom the beverage was furnished was under 21 years of age;**

***Third:* That the beverage in question was alcohol or an alcoholic beverage; and**

***Fourth:* That the defendant knew that the beverage was alcohol or an alcoholic beverage.**

If the Commonwealth has proven all four things beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these things beyond a reasonable doubt, you must return a verdict of not guilty.

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NOTES:

1. **Statute does not criminalize parent giving alcohol to own child in parent's own home.** The legislative intent of G.L. c. 138, § 34 was to allow parents the freedom to decide whether they wish to provide alcohol to their own children without fear of criminal liability, "regardless whether that act is characterized as furnishing or delivering." *Commonwealth v. Parent*, 465 Mass. 395, 410 (2013).

2. **Defendant under age of 21 may be prosecuted under this statute.** See *Commonwealth v. Kneram*, 63 Mass. App. Ct. 371, 375 (2005).

3. **Knowledge of age is not required.** "Generally, when age is a factor in an offense, the government is not required to prove that the offender knew the age of the person to whom age is relevant, whether that person be victim or collaborator." *Commonwealth v. Montalvo*, 50 Mass. App. Ct. 85, 87 (2000) (citing G.L. c. 138, § 34). The Supreme Judicial Court has held that the earlier versions of G.L. c. 138, § 34 imposed strict criminal liability with respect to the age of the person obtaining alcohol. *Commonwealth v. Corey*, 351 Mass. 331, 333 (1966); *Commonwealth v. Gould*, 158 Mass. 499, 507 (1893) ("Knowledge that the purchaser was a minor was not essential to the offense.").

4. **"Furnish."** This term is defined in G.L. c. 138, § 34 as "to knowingly or intentionally supply, give, or provide to or allow a person under 21 years of age except for the children and grandchildren of the person being charged to possess alcoholic beverages on premises or property owned or controlled by the person charged. Nothing in this section shall be construed to prohibit any person licensed under this chapter from employing any person 18 years of age or older for the direct handling or selling of alcoholic beverages or alcohol. Notwithstanding the provisions of clause (14) of section 62 of chapter 149, a licensee under this chapter may employ a person under the age of 18 who does not directly handle, sell, mix or serve alcohol or alcoholic beverages."

5. **"Alcohol."** This term is defined in G.L. c. 138, § 1 as "all alcohol other than denatured alcohol or alcohol described in section three hundred and three A of chapter ninety-four." Section 303A of G.L. c. 94 provides: "No person other than a registered druggist shall engage in the business of manufacturing, buying, selling, transporting, importing, exporting or dealing in **methyl alcohol**, or **wood alcohol**, so called, or any preparation, other than shellac varnish or shellac solvent or paint remover or varnish remover, used for manufacturing or commercial purposes which contains **more than three per cent of methyl alcohol** and is **intended for use other than as a beverage**, without being licensed so to do as provided in section three hundred and three B" (emphasis added).

6. **"Alcoholic beverages."** This term is defined in G.L. c. 138, § 1 as "any liquid intended for human consumption as a beverage and containing one half of one per cent or more of alcohol by volume at sixty degrees Fahrenheit."