

JUVENILE ALCOHOL POLICY EXECUTIVE SUMMARY

My intent is to enforce a policy of strict enforcement based upon transparency of expectations by all, resting upon the good judgment and sound discretion of its sworn Officers. This policy allows for civil, criminal or administrative actions to be taken, allowing for no action only in extra-ordinary and well documented cases. The following flow chart depicts the resolution process:

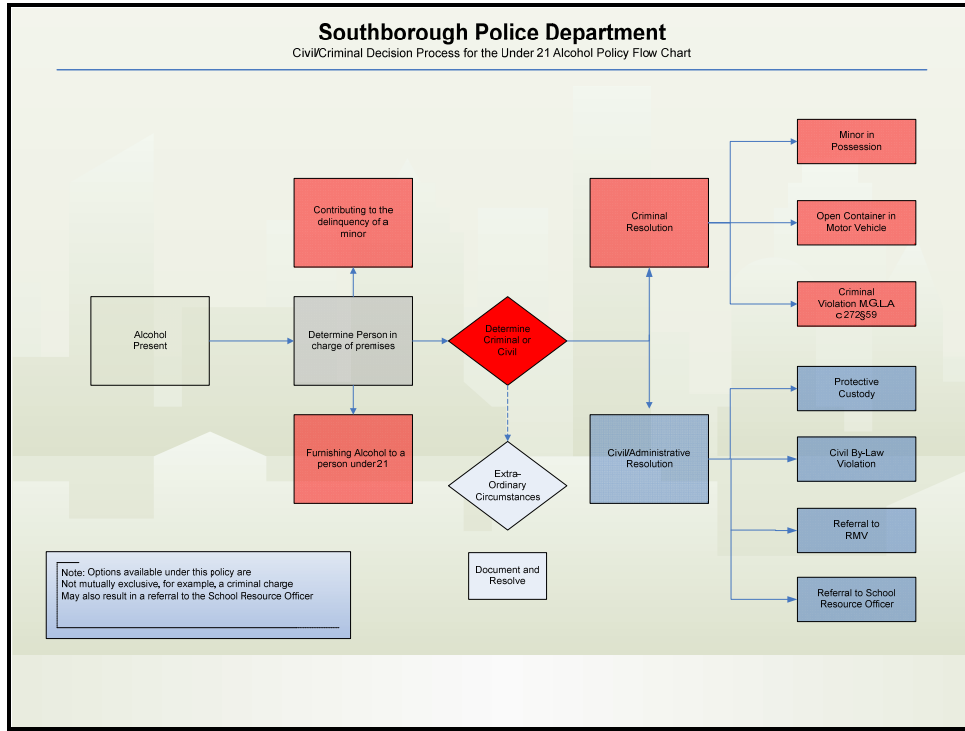


Figure 1
Juvenile Alcohol Decision Flow Chart

Police personnel must act in a manner which facilitates our desired end state of protecting the public. They do so by controlling the scene, determining sobriety in a manner that seeks to prioritize risk then taking enforcement actions in a fair, yet firm manner.

The Board of Selectmen and the public have had an opportunity to comment on our draft. This revision incorporates some of the recommendations. Our keys to success remain:

- A partnership with the schools, elected leadership and the community;
- Transparency in the policy making process;
- Setting clear expectations of what behavior will result in enforcement and
- Enforcement in a fair and equal manner.

INTRODUCTION

Juvenile alcohol incidents present a complex problem for law enforcement, schools, the court system and society. 54 % of high school seniors and 48 % of juniors currently use alcohol,¹ with liquor law violations representing 9 % of all Part II Uniform Crime Report arrests in Massachusetts.²

In 2003, the Massachusetts Department of Public Health's report "*A Shared Vision for Massachusetts Youth and Young Adults*" found that "Alcohol is the most common drug used by youth and can pose a serious threat to health and safety. Underage drinking is a major contributing factor in approximately 50 % of all Motor Vehicle Accidents, homicides and suicides."³ Operating Under the Influence arrests are highest amongst adults between the ages of 18 and 24⁴. While some, longer term facets of the management of this issue fall under the purview of other agencies, the initial resolution of these calls are the responsibility of the Police.

POLICY STATEMENT

The Southborough Police Department, in accordance with the laws of the Commonwealth, shall advance a policy of strict enforcement, incorporating the resources of all available agencies to ensure the safety of those under the age of twenty one who may have consumed or are in the possession or presence of alcoholic beverages.

The dynamics of law enforcement are such that it is difficult to promulgate one single policy statement that covers all variants of these calls. The community relies upon the sound judgment and discretion of its Police Officers and Sergeants.

This policy statement is designed to focus an Officer's discretion towards a strategic policy objective; the overall protection of the public. This will be accomplished through a cooperative effort between town and school leaders that results in common expectations of offender involvement in our legal system. While there may be extraordinary circumstances that require the Patrol Supervisor to deviate from this policy, my intent is to have fair and equitable application, utilizing traditional and non-traditional resources.

¹ Massachusetts Department of Education, 2004 (as compiled by the Executive Office of Public Safety)

² Federal Bureau of Investigation, Uniform Crime Reports

³ Massachusetts Department of Public Health's "*A Shared Vision for Massachusetts Youth and Young Adults*" Executive Summary, page iv.

⁴ Massachusetts Department of Public Health "*Alcohol Use, Illicit Drug Use, and Gambling in Massachusetts, 2002*" Supplement to "A Profile of Health among Massachusetts Adults, 2002 Results from the Behavioral Risk Factor Surveillance System, dated July 2005

SCOPE OF THE POLICY

This policy statement covers all alcohol related incidents where those involved are under the age of twenty-one, including minor in possession, open container, public intoxication and response to house parties where alcohol is present (with and without adults in the dwelling).

This policy should be read in connection (and without limitation) with such complementary statutes as Massachusetts General Laws (M.G.L.A.) Chapter 90 Section 24 (4) (e) covering juveniles operating under the influence,⁵ and disorderly conduct under M.G.L.A. Chapter 272, Section 53. M.G.L.A. Chapter 111B, Section 8, although non-criminal in nature provides valuable and viable resources in the effective resolution of these calls. I have included as footnotes the applicable statute(s) for your reference.

RESPONSE TO HOUSEPARTIES

Officers responding to house parties are presented with numerous responsibilities, paramount of which is the identification and protection of those who may be intoxicated.

1. Upon the arrival at the scene of a house party, the patrol supervisor shall make a determination whether additional resources are needed. If so, these resources shall be requested from the nearest bordering town;
2. Cruisers shall, to the extent permissible, be parked initially in a manner to impede the exiting of vehicles operated by those at the party. The purpose behind this is to allow for the determination of sobriety of the operators;
3. Officers shall maintain the peace; ensuring the music and noise are reduced to a reasonable level, given the time of day, location, proximity of neighbors, number of complaints received.
4. Officers shall then identify the "Person in Control of the Premises".
 - a. This person may or may not be the owner or resident of the premises, although the first level of inquiry shall be to identify both categories;
 - b. This person may or may not be over the age of twenty-one (21). This determination is essential to the follow on decisions concerning the nature and extent of any charges to be brought.

⁵ **M.G.L.A. Chapter 90 Section 24 (4) (e)** holds "(t)hat in an instance where a defendant is under the age of twenty-one and such evidence is that the percentage, by weight, of alcohol in the defendant's blood is two one-hundredths or greater, the officer who placed him under arrest shall, in accordance with subparagraph (2) of paragraph (f), suspend such defendant's license or permit and take all other actions directed therein".

5. Officers shall then attempt to determine the identity of all participants.
⁶This policy recognizes that given the potential size of some parties, this may not be possible. My intent is that to the extent possible, all participants shall be identified for follow on action(s);
6. Officers shall then determine the sobriety of all participants, in the following order:
 - a. Operators of motor vehicles;
 - b. Passengers;
 - c. Local residents. For purposes of this policy, “local residents” shall be defined as those individuals who live within close proximity to the call and who are reasonably expected to walk home.
 - d. Residents of the house in question.
7. In determining sobriety, Officer(s) shall, at their discretion use either a Preliminary Breath Test (PBT) machine or the standardized in-field sobriety tests. Participation in these in-field sobriety tests shall be voluntary. In the event of a subject’s non-participation, Officers shall use the evidence presented to them to form a conclusion as to any possible impairment.
8. The results of these tests shall be documented in our computer system as soon as practicable under the circumstances for those not taken into custody and in report form for taken into custody.
9. Those individuals under the age of twenty-one, who are not residents of the dwelling that is the location of the call, may be charged and/or placed into custody. This shall be the preferred course of action. Officer(s) placing subjects into custody and/or charging should consider the following statutes:

⁶ M.G.L.A. Chapter 90, Section 25 requires those operating a motor vehicle to produce both license and registration upon demand of a police officer. There is no statutory obligation of a non-operator to produce identification.

a. **Person Under the Age of Twenty-One in Possession of Alcohol: (M.G.L.A. Chapter 138, Section 34C)**

- i. “Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses, transports or carries on his person, any alcohol or alcoholic beverages * * * **A Police Officer may arrest without a warrant any person who violates this section**”⁷

1. M.G.L.A. 138.34C does not require the operation of a motor vehicle.

b. **Possession of An Open Container of Alcohol (M.G.L.A. Chapter 90, Section 24I)**

- i. Requires the open container to be present in the driver and/or passenger area of a motor vehicle, irrespective of age.
- ii. Applies to passengers and/or driver
- iii. This statute, a civil violation, by itself does not carry with it the power of arrest for those over twenty-one.
- iv. M.G.L.A. Chapter 272, Section 59, read in connection with the Town’s By-law Chapter 50 does afford a right of arrest (over 21) for a “willful violation”.

⁷ . **Chapter 138: Section 34C. Minors; operation of motor vehicle containing alcoholic beverage; suspension of driver’s license**

Section 34C. Whoever, being under twenty-one years of age and not accompanied by a parent or legal guardian, knowingly possesses, transports or carries on his person, any alcohol or alcoholic beverages, shall be punished by a fine of not more than fifty dollars for the first offense and not more than one hundred and fifty dollars for a second or subsequent offense; provided, however, that this section shall not apply to a person between the ages of eighteen and twenty-one who knowingly possesses, transports or carries on his person, alcohol or alcoholic beverages in the course of his employment. A police officer may arrest without a warrant any person who violates this section. A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court, and said registrar shall thereupon suspend for a period of ninety days the license of such person to operate a motor vehicle.

c. **Consumption (of an Alcoholic beverage) on Public Ways Prohibited: (Town of Southborough By-Law Chapter 50, Sections 1 and 2)**⁸

- i. The Town's by-laws, including 50-3⁹ may be civil in nature.
- ii. The Town's by-laws, in and of itself does not carry with it a power of arrest for violation.
- iii. The By-Laws carry with it a civil assessment of \$50.00.¹⁰

⁸ Chapter 50-1 of the Town of Southborough By-Laws states: "No person shall consume any alcoholic beverage, as defined under Chapter 138 of the General Laws, while in or upon any public way in the Town of Southborough. Chapter 50-2, entitled "**Consumption in Public Places Restricted**" states: No person shall consume any alcoholic beverage, as defined in Chapter 138 of the General Laws, upon any way or place in the Town of Southborough to which the public have access as invitees or licensees without permission of the owner or person in control of said premises or unless the sale or distribution of said beverages has been authorized by license from the Board of Selectmen under a license as provided by said Chapter 138. Note: While 50-1 applies to a public way, 50-2 extends the prohibition to those ways where the public has access as a licensee or invitee.

⁹ 50-3 states: "No person shall keep, use, consume or have in his/her possession any alcoholic beverage, as defined under Chapter 138 of the General Laws, in any park, playground, or public school premises in the Town of Southborough, except as may be sold and distributed in connection with a license issued by the Board of Selectmen under said Chapter 138.

¹⁰ Chapter 50, Section 4 of the By-Laws states: "Whoever violates any provision of this chapter shall be punished by a fine of not more than fifty dollars (\$50.)." Initiation of an action under this section would be via a Town of Southborough Parking Violation form, with the box "Other" checked with \$50.00 noted. The Officer should note the specific violation on the form.

d. **M.G.L.A. Chapter 272, Section 59¹¹ : Alcoholic Beverages; * * * Arrest Without Warrant:**

- e. The Town's By-laws, as set forth above, read in connection with M.G.L.A. Chapter 272, Section 59 provides for the criminal prosecution of the same offenses.
- i. The civil by-law does not require the element of "willful violation" that is present in the criminal statute.
 - ii. Civil actions, by their nature, require a "preponderance of the evidence" at trial.

10. M.G.L.A. Chapter 111B, Section 8 (Protective Custody) : This non-criminal statute states, in part:

- a. "Any person who is incapacitated may be assisted by a police officer with or without his consent to his residence, to a facility or to a police station. To determine for purposes of this chapter only, whether or not such person is intoxicated, the police officer may request the person to submit to reasonable tests of coordination, coherency or speech, and breath."¹²

¹¹ "Whoever remains in a street or elsewhere in a town in willful violation of an ordinance or by-law of such town or of any rule or regulation for the government or use of any public reservation, parkway or boulevard made under authority of law by any department, officer or board in charge thereof, whoever is in a street or elsewhere in a town **in willful violation of an ordinance of by-law or such town or of any rule or regulation for the government or use of any public reservation, parkway or boulevard made under authority of law by any department, officer or board in charge thereof, the substance of which is the drinking or possession of alcoholic beverage**, and whoever in a street or other public place accosts or addresses another person with profane or obscene language, in willful violation of an ordinance or by-law of such town, **may be arrested without a warrant by an Officer authorized to serve criminal process** in the place where the offence is committed and kept in custody until he can be taken before a court having jurisdiction of the offense" (emphasis supplied).

¹² MGLA Chapter 119 § 8. Any person who is incapacitated may be assisted by a police officer with or without his consent to his residence, to a facility or to a police station. To determine for purposes of this chapter only, whether or not such person is intoxicated, the police officer may request the person to submit to reasonable tests of coordination, coherency of speech, and breath.

Any person assisted by a police officer to a police station shall have the right, and be informed in writing of said right, to request and be administered a breathalyzer test. Any person who is administered a breathalyzer test shall be presumed intoxicated if evidence from said test indicates that the percentage of alcohol in his blood is ten one hundredths or more and shall be placed in protective custody at a police station or transferred to a facility. Any person who is administered a breathalyzer test, under this section, shall be presumed not to be intoxicated if evidence from said test indicates that the percentage of alcohol in his blood is five one hundredths or less and shall be released from custody forthwith. If any person who is administered a breathalyzer test, under this section, and evidence from said test indicates that the percentage of alcohol in his blood is more than five one hundredths and is less than ten one hundredths there shall be no presumption made based solely on the breathalyzer test. In such instance a reasonable test of coordination or speech coherency must be administered to determine if said person is intoxicated. Only

- b. For the purposes of this policy, unless the subject is at his or her legal residence, the preferred course of action is to assist the person to the police station.
 - i. Once at the station, the subject is to be afforded all applicable rights under this statute.
 - ii. Pursuant to M.G.L.A. Chapter 111B, Section 10, any subject taken into protective custody and held at the police station, who is under eighteen years of age shall be released to his/her parent or legal guardian.

when such test of coordination or speech coherency indicates said person is intoxicated shall he be placed in protective custody at a police station or transferred to a facility.

Any person presumed intoxicated and to be held in protective custody at a police station shall, immediately after such presumption, have the right and be informed of said right to make one phone call at his own expense and on his own behalf. Any person assisted by a police officer to a facility under this section shall have the right to make one phone call at his own expense on his own behalf and shall be informed forthwith upon arriving at the facility of said right. The parent or guardian of any person, under the age of eighteen, to be held in protective custody at a police station shall be notified forthwith upon his arrival at said station or as soon as possible thereafter.

If any incapacitated person is assisted to a police station, the officer in charge or his designee shall notify forthwith the nearest facility that the person is being held in protective custody. If suitable treatment services are available at a facility, the department shall thereupon arrange for the transportation of the person to the facility in accordance with the provisions of section seven.

No person assisted to a police station pursuant to this section shall be held in protective custody against his will; provided, however, that if suitable treatment at a facility is not available, an incapacitated person may be held in protective custody at a police station until he is no longer incapacitated or for a period of not longer than twelve hours, whichever is shorter.

A police officer acting in accordance with the provisions of this section may use such force as is reasonably necessary to carry out his authorized responsibilities. If the police officer reasonably believes that his safety or the safety of other persons present so requires, he may search such person and his immediate surroundings, but only to the extent necessary to discover and seize any dangerous weapons which may on that occasion be used against the officer or other person present; provided, however, that if such person is held in protective custody at a police station all valuables and all articles which may pose a danger to such person or to others may be taken from him for safekeeping and if so taken shall be inventoried.

A person assisted to a facility or held in protective custody by the police pursuant to the provisions of this section, shall not be considered to have been arrested or to have been charged with any crime. An entry of custody shall be made indicating the date, time, place of custody, the name of the assisting officer, the name of the officer in charge, whether the person held in custody exercised his right to make a phone call, whether the person held in custody exercised his right to take a breathalyzer test, and the results of the breathalyzer test if taken, which entry shall not be treated for any purposes, as an arrest or criminal record.

1. The policy of this department shall be that the parent(s) or legal guardian of those under eighteen in protective custody shall be contacted irrespective of the desires of the subject or the hour of the day.
- iii. The release of subjects over the age of eighteen but under twenty-one shall be governed by M.G.L.A. 111B, Section 8.
- iv. that “(a)n incapacitated person may be held in protective custody at a police station until he is no longer incapacitated or for a period of not longer than twelve hours, whichever is shorter.
 1. The policy of this department shall be to comply with the above terms relative to release and **not to release to another person(s) before either of the above condition precedent is complied with.**

11. Furnishing Alcohol to a Person Under the Age of 21 (M.G.L.A. Chapter 138, Sections 34¹³ and 34A¹⁴)

¹³ **Chapter 138: Section 34. Sale, delivery or furnishing alcoholic beverages to persons under twenty-one years of age; employment of persons under eighteen years of age**

Section 34. No person shall receive a license or permit under this chapter who is under 21 years of age. Whoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, or whoever, being a patron of an establishment licensed under section 12 or 15, delivers or procures to be delivered in any public room or area of such establishment if licensed under section 12, 15, 19B, 19C or 19D or in any area of such establishment if licensed under said section 15, 19B, 19C or 19D any such beverages or alcohol to or for use by a person who he knows or has reason to believe is under 21 years of age or whoever procures any such beverage or alcohol for a person under 21 years of age in any establishment licensed under section 12 or procures any such beverage or alcohol for a person under 21 years of age who is not his child, ward or spouse in any establishment licensed under said section 15, 19B, 19C or 19D or whoever furnishes any such beverage or alcohol for a person under 21 years of age shall be punished by a fine of not more than \$2,000 or by imprisonment for not more than one year or both. **For the purpose of this section the word “furnish” shall mean 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.

¹⁴ **Chapter 138: Section 34A. Persons under twenty-one years; purchase or attempt to purchase alcoholic beverages**

Section 34A. Any person under twenty-one years of age who purchases or attempts to purchase alcoholic beverages or alcohol, or makes arrangements with any person to purchase or in any way procure such

- a. Whenever Officers of this department are presented with any evidence that alcohol may have been furnished to a person under the age of twenty-one, an investigation shall be conducted to determine if sufficient evidence exists to warrant charges under either of the above statutes.
 - i. If resources and logistics are such that it may not be reasonable to conduct such an investigation at the time of the call, the patrol supervisor is authorized to immediately call in other police personnel to start an inquiry.

12. M.G.L.A. Chapter 119, Section 63¹⁵ (Inducing or abetting delinquency of child)

- a. The scope of this investigation shall include an analysis of evidence for prosecution under M.G.L.A. Chapter 119, Section 63.
 - i. For the purposes of this policy, M.G.L.A. Chapter 119, Section 52 defines a delinquent child as “a child between seven and

beverages, or who willfully misrepresents his age, or in any way alters, defaces or otherwise falsifies his identification offered as proof of age, with the intent of purchasing alcoholic beverages, either for his own use or for the use of any other person shall be punished by a fine of three hundred dollars and whoever knowingly makes a false statement as to the age of a person who is under twenty-one years of age in order to procure a sale or delivery of such beverages or alcohol to such person under twenty-one years of age, either for the use of the person under twenty-one years of age or for the use of some other person, and whoever induces a person under twenty-one years of age to make a false statement as to his age in order to procure a sale or delivery of such beverages or alcohol to such person under twenty-one years of age, shall be punished by a fine of three hundred dollars. A conviction of a violation of this section shall be reported forthwith to the registrar of motor vehicles by the court. Upon receipt of such notice the registrar shall thereupon suspend for 180 days the defendant’s license or right to operate a motor vehicle.

The commission shall prepare and distribute to business establishments which sell, serve or otherwise dispense alcohol or alcoholic beverages to the general public, posters to be displayed therein in a conspicuous place. Said posters shall contain a summary and explanation of this section.

¹⁵ **Chapter 119: Section 63. Inducing or abetting delinquency of child**

M.G.L.A. Chapter 119, Section 63. **Any person who shall be found to have caused, induced, abetted, or encouraged or contributed toward the delinquency of a child, or to have acted in any way tending to cause or induce such delinquency,** may be punished by a fine of not more than five hundred dollars or by imprisonment of not more than one year, or both. The court may release on probation under section eighty-seven of chapter two hundred and seventy-six, subject to such orders as it may make as to future conduct tending to cause, induce or contribute to such delinquency, or it may suspend sentence under section one of chapter two hundred and seventy-nine, or before trial, with the defendant’s consent, it may allow the defendant to enter into a recognizance, in such penal sum as the court may fix, conditioned to comply with such terms as the court may order for the promotion of the future welfare of the child, and the said case may then be placed on file. The provisions for recognizance in section fifty-six shall be applicable to cases arising hereunder. The divisions of the juvenile court department shall, within their respective territorial limits, have exclusive jurisdiction over complaints alleging violations of this section.

seventeen who violates any city ordinance or town by-law or who commits any offence against a law of the commonwealth”

1. Officer(s) shall carefully scrutinize evidence to determine if sufficient evidence exists to charge subjects under this statute. This department’s policy shall be that when sufficient evidence exists that warrant such a charge, an application for a complaint shall be the preferred course of action.

RESPONSE TO OTHER ALCOHOL RELATED CALLS OVERALL GUIDANCE AND SUMMARY

1. As set forth in this policy, my intent is to foster an environment of strict enforcement. When responding to other calls involving alcohol, the same standards apply. Unless there are exceptional circumstances that may be documented by the patrol supervisor, my expectation is that when sufficient evidence is present, Officers of this department shall initiate one form of legal action as set forth below:
2. The General Laws and Town By-Laws provide significant tools for ensuring a safe environment. Officers have, within their sound discretion a range of criminal, civil and administrative sanctions available to reinforce our policy.
 - a. **Criminal Prosecution:** May be commenced by arrest or complaint application (as appropriate under the law) for the following:
 - i. Person Under the Age of Twenty-One in Possession of Alcohol (M.G.L.A. 138.34C);
 - ii. Consumption of an Alcoholic Beverage M.G.L.A. Chapter 272, Section 59; when read in connection with the Town of Southborough By-Law violation (Code 50-1, 50-2 and 50-3)
 - iii. Furnishing Alcohol to a Person Under the Age of 21 (M.G.L.A. Chapter 138, Sections 34 and 34A
 - iv. Inducing or abetting delinquency of (a) Child, M.G.L.A. Chapter 119, Section 63
 - b. **Civil Action:** May be commenced through a By-Law violation under:
 - i. Code of Southborough 50-1, 50-2 and 50-3

c. Non-Criminal Action: May be commenced under:

- i. M.G.L.A. 111B, Section 8 (Protective Custody);
 - ii. Referral to the Registry of Motor Vehicles
 - iii. Referral to the School Resource Officer
3. Your exercise of good judgment and sound discretion is expected by me and the citizens for whom we serve. I will support your decisions provided they are well documented in substance and reasonable in nature.
 4. Town of Southborough Juvenile Alcohol Policy was approved by the Board of Selectmen on November 6, 2007.
 5. The attachments which follow are not part of the formal policy.

W H WEBBER

Southborough Police Department

Juvenile Alcohol Policy
November 6, 2007

Figure 2
Slide 1

Draft Juvenile Alcohol Policy

- Designates desired effect; e.g. “Overall protection of the public”
 - Effects based; starts with question
 - *“What is our overall goal or desired end state?”*
 - Integrates resources of public, court and school systems, town and police to reduce juvenile alcohol use;
- Policy of “strict enforcement” in cases where alcohol is present

Figure 3
Overall Policy Statement

Courses of Action

- **Criminal**
 - Person under 21 in possession (MGLA 138§34C)
 - Town of Southborough By-Law violation (50-1/2/3) in connection with MGLA 272§59;
 - Furnishing Alcohol to a Minor (MGLA 138§34)
 - Inducing or abetting delinquency of a child (119§63)
- **Non-Criminal**
 - Protective Custody (MGLA 111B§8)
 - Town of Southborough By-Law (50/1/2/3) alone
 - Registry of Motor Vehicle action in connection with specific statutes
 - Referral to the School Resource Officer
 - Magistrate's Hearing

Figure 4
Courses of Action Available

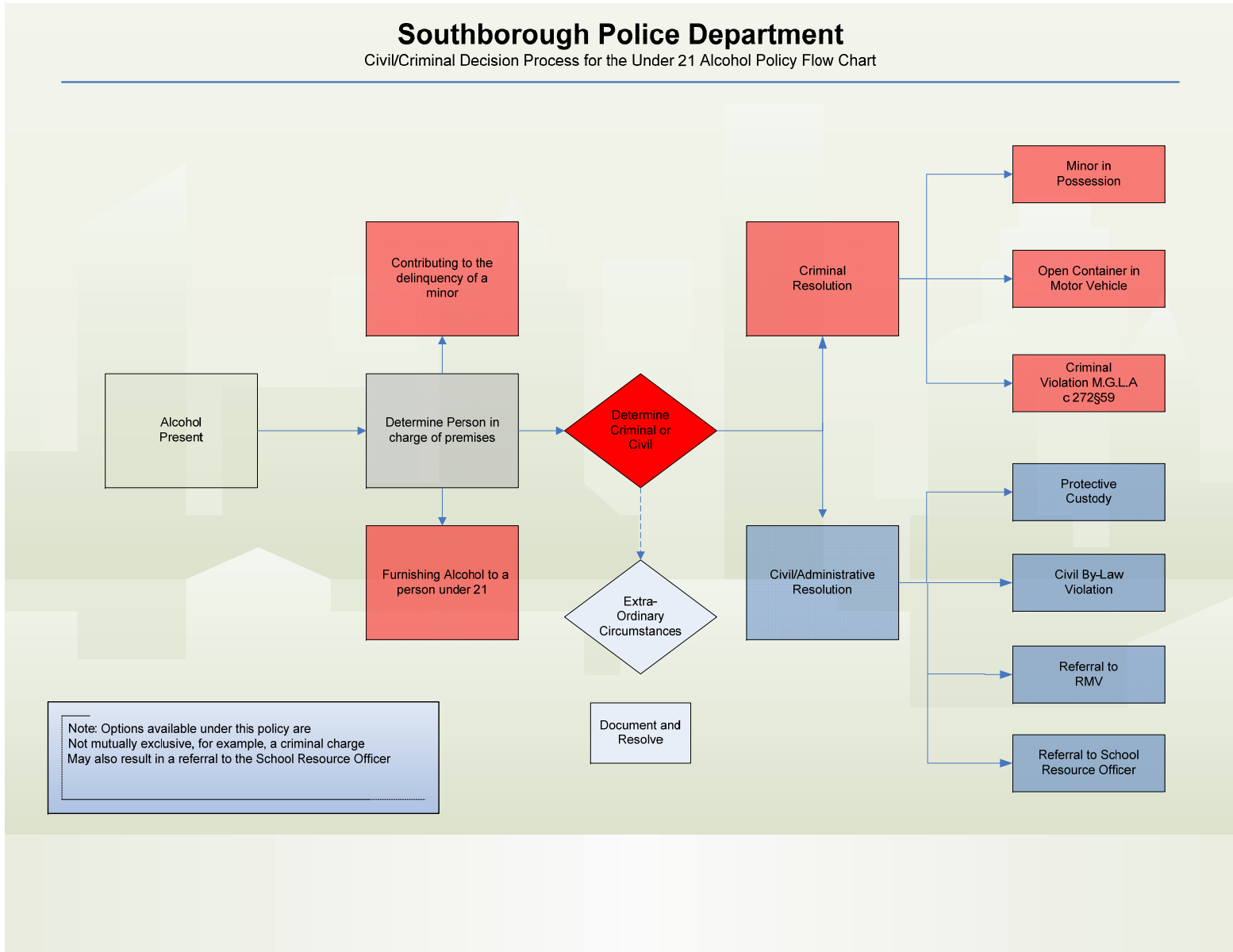
Keys to Success

- Sound review of draft by all concerned;
- Incorporation of recommended changes as they advance overall goal;
- Publication of proposed policy at the Selectmen's level with the public's opportunity to comment
- Revision as appropriate and ratification by the Board of Selectmen
- Wide distribution and publication of final and approved policy
- Intent is to place public on notice as to what is reasonable to expect under certain circumstances
 - Allows for proactive and preventative action
- Adherence to policy once approved and issued

Figure 5
Keys to Success

Southborough Police Department

Civil/Criminal Decision Process for the Under 21 Alcohol Policy Flow Chart



Note: Options available under this policy are
 Not mutually exclusive, for example, a criminal charge
 May also result in a referral to the School Resource Officer

