

Compromise Process for Resolving ABC Administrative Violations Lacks Policies and Procedures, Rationale, and Transparency, Resulting in Disproportionate Penalties

A presentation to the Joint Legislative
Program Evaluation Oversight Committee

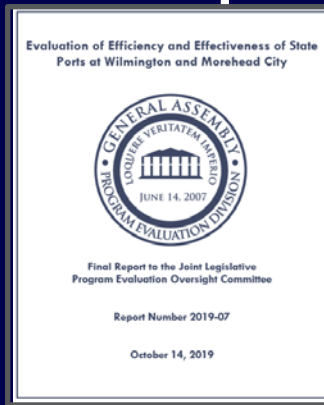
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In Your Folder

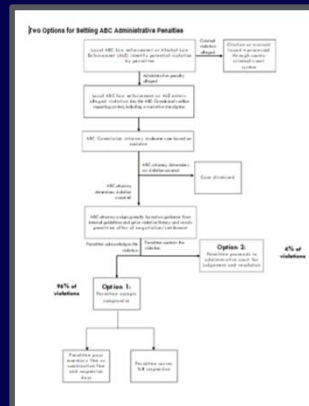
Full Report



Slides



Handout



Our Charge

- Directed to examine
 - Proportionality of penalties to violations
 - Permittee activities not covered by violations
 - Effectiveness and efficiency
- Agency: Alcoholic Beverage Control (ABC) Commission
- Team: Sean Hamel, Jacob Ford, Sidney Thomas

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Overview: Findings

1. ABC Commission has neither established rationale or policies and procedures for administrative penalty guidelines nor demonstrated sufficient transparency
2. Consequently, ABC Commission's compromise process results in disproportionate penalties for identical violations



Overview: Findings

3. Decrease in consumption-related violations suggests penalties are generally effective, yet increased repeat offense rate indicates room for improvement
4. ABC Commission's procedure for settling administrative violations takes longer and costs more than administrative court; however, the two processes are complementary
5. Current law sufficiently covers all areas of permittee activities



Overview: Recommendations

The General Assembly should

1. Direct the ABC Commission to create policies and procedures, improve transparency by publicizing guidelines, and consider moving to a throughput-based or sales-based system for penalties
2. Improve ABC Commission reporting requirements to include effectiveness measures



Background



Permitting

- States regulate permittees in alcohol-related activities to achieve two goals:
 - Public Safety
 - Administrative Compliance
- States regulate access to alcoholic beverage marketplace by issuing permits
 - 76 types of permits available to breweries, distributors, bars, restaurants, clubs, etc.
- In FY 2017–18
 - 5,275 new permits were issued
 - 23% increase from Fiscal Year 2009–10

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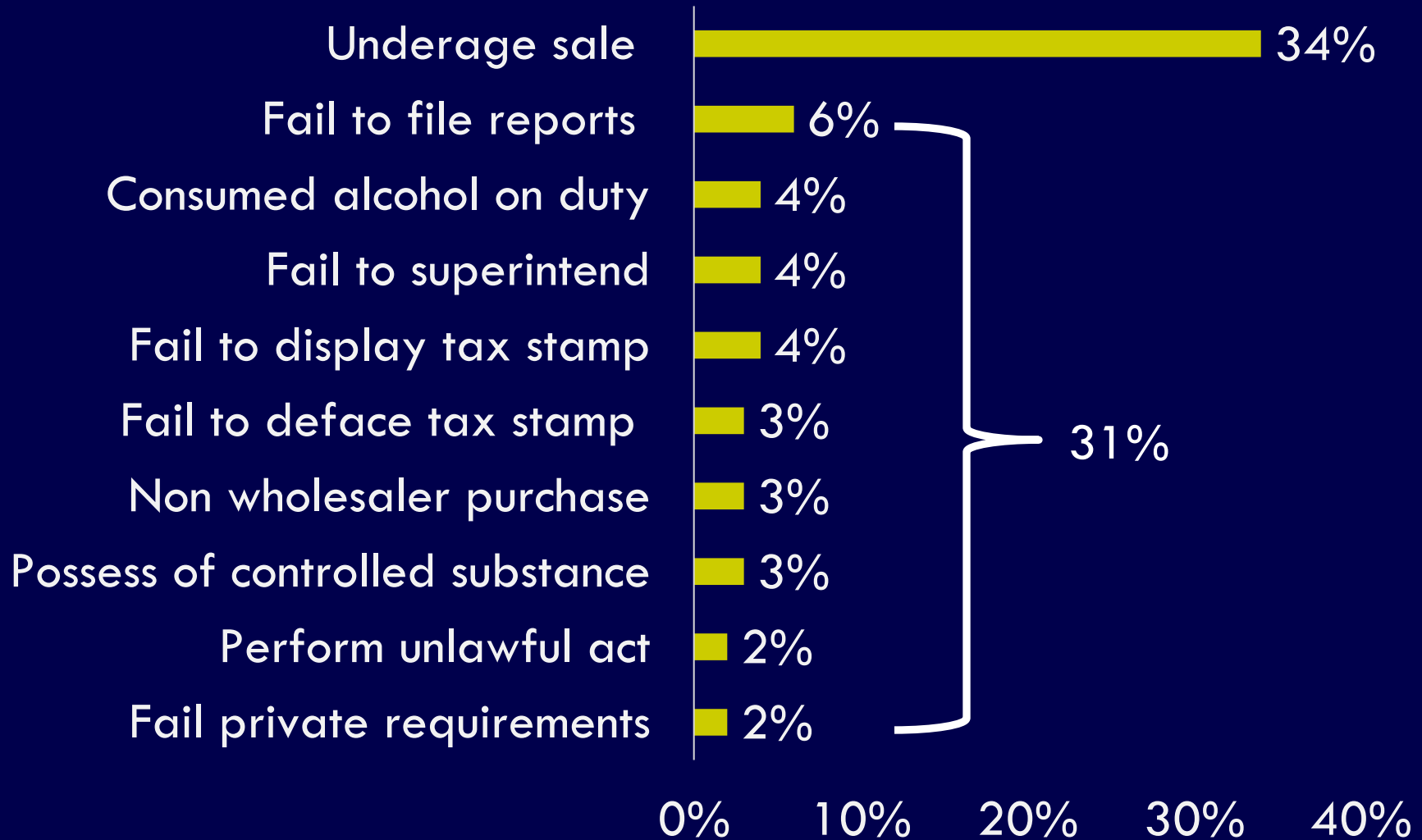
Administrative Penalties

- ABC assesses administrative penalty for a violation of permit requirements, administrative code, or relevant state law
 - Chapter 18B or Article 2C of Chapter 105 of the General Statutes
- The ABC Commission approves permit applications, regulates activities, and enforces penalties
- Penalties include fines and permit suspensions or revocations

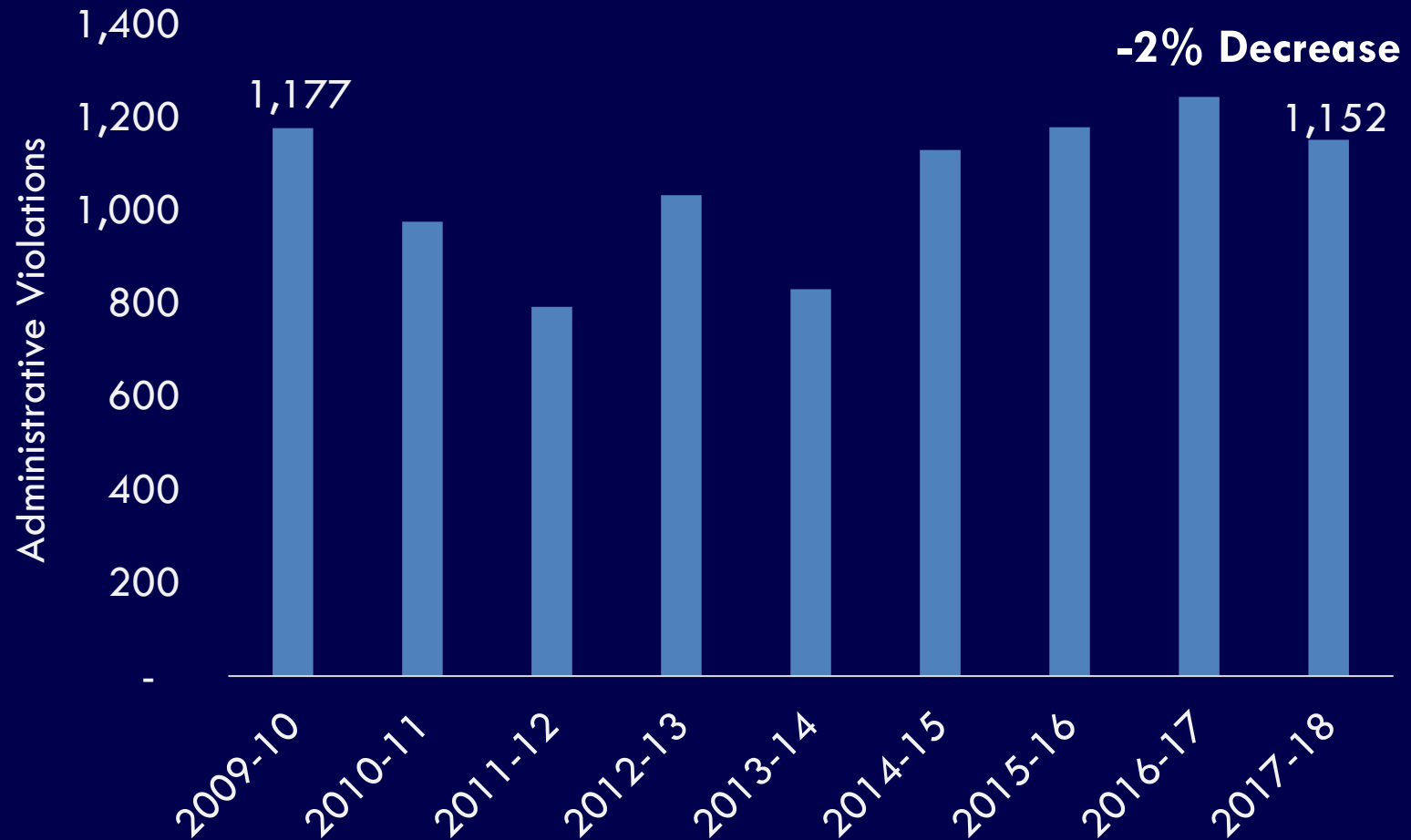
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Most Common Violations



Violations Have Fluctuated Year to Year But Have Decreased Overall

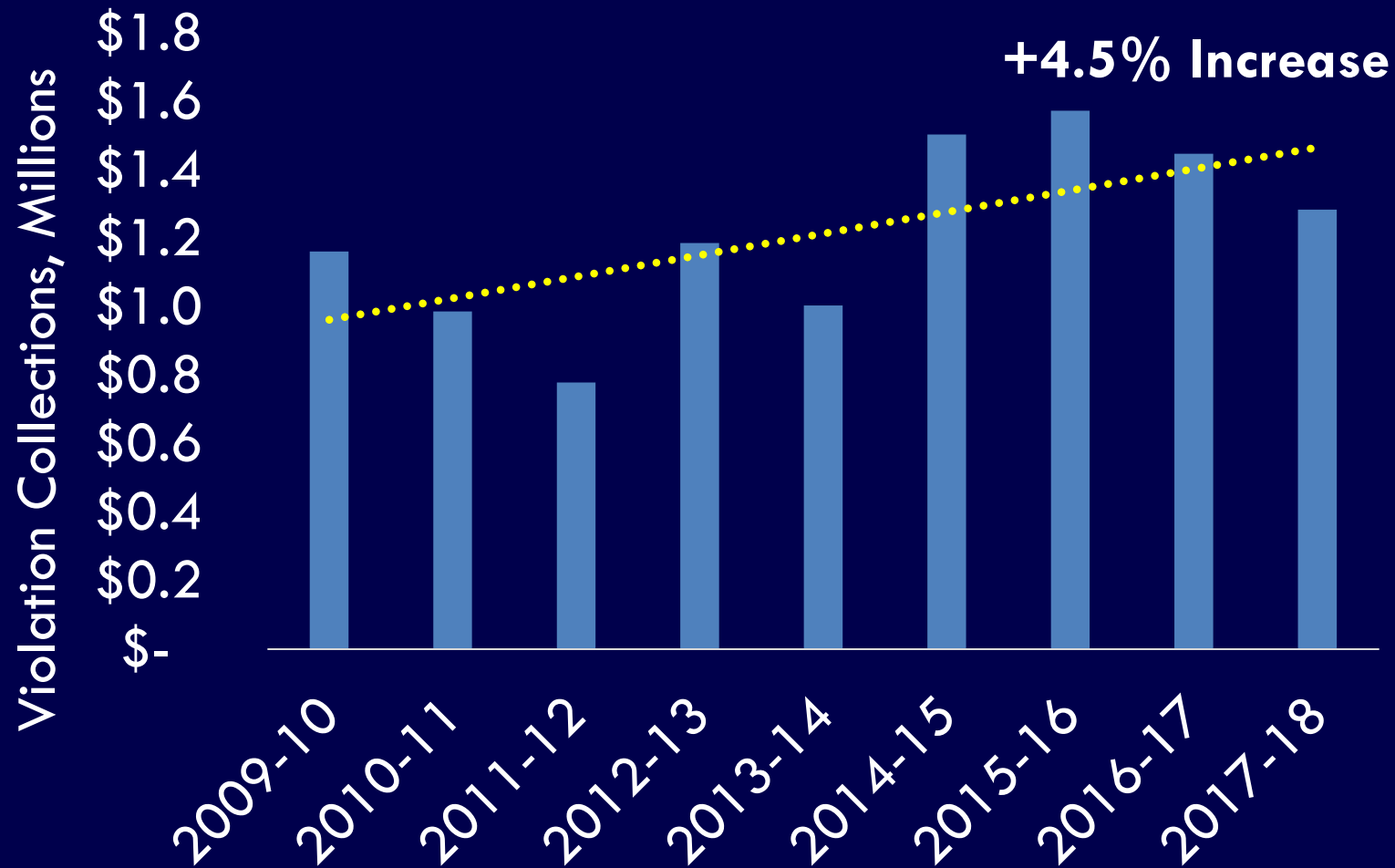


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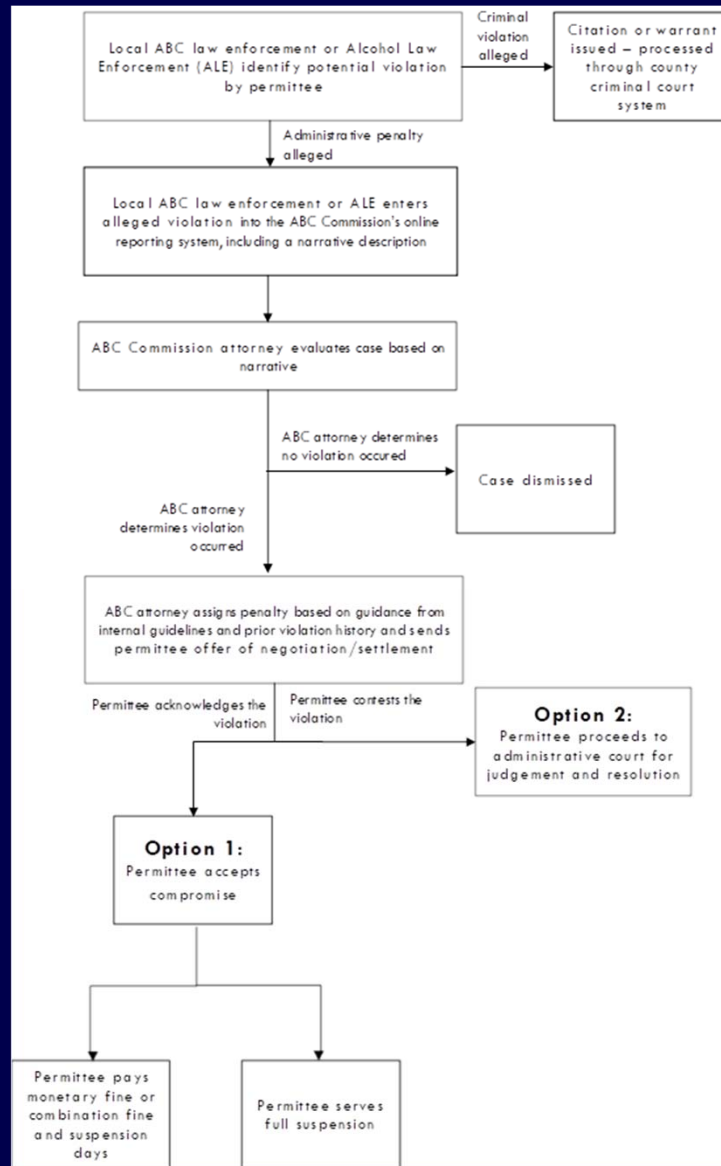


Collections from Fines

Collections go to the local school boards



Enforcement and Settlement Process



96% of Violations

4% of Violations

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Criteria for Proportionality

1. Structure of penalty

graduated rank; reflect seriousness within a violation

2. Ranking of severity

reasonable proportion between penalty and seriousness

Example: Most serious violations earn the largest penalties

Example: Graduated fines for repeat infractions of a violation

Three Principles of Proportionality

3. Equal

application

of penalties for equal infractions

Example: Similar penalties are imposed for identical infractions

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Findings



Finding 1

ABC Commission lacks documented rationale for administrative penalty guidelines to ensure objectivity and does not notify permittees of changes to penalty guidelines

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Penalties Lack Documentation, Transparency, and Rationale

- Penalty guidelines exist but policies and procedures that justify and guide how the penalty guidelines are used and applied do not
- Penalty guidelines are not publicly available and are subject to frequent changes

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Penalties Lack Rationale

Ranking of severity

Reasonable proportion between the penalty and the seriousness of the given violation

Offense	Gambling	Video poker	Sale to Underage
1 st	\$500 or 5A	\$2,500 or 25A	\$2,000 or 20A
2 nd	\$1,000 or 10A	\$5,000 or 50A	\$3,500 or 35A
3 rd	\$2,000 or 20A	Revocation	\$5,000 & 5A or 60A
4 th	N/A	N/A	\$5,000 & 15A or 90A

Note: Penalties with numeric values followed by an "A" represent the number of days of voluntary active suspension



Finding 2

ABC Commission's compromise process presents different offers to permittees charged with identical violations and does not equally apply monetary penalties

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Real Value of a Single Day of Suspension Varies Widely

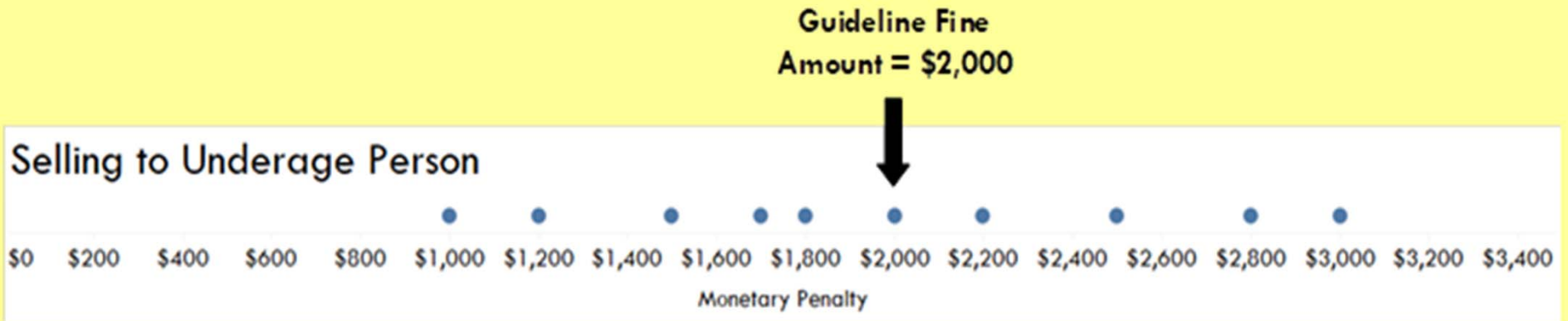
ABC Value of Single Day Suspension
\$100

Estimated Real Costs of Single Day Suspension

Maximum	\$7,838
Average	\$946
Minimum	\$0.66



Fines Not Always Equally Applied for First Offenses of the Same Infraction



Guideline Fine Amount = \$600



Barriers Exist to Improving Proportionality

- Using sales or volume as the basis for penalties could improve proportionality
 - Colorado and California use alcohol sales as basis for penalties
- Commission does not collect data on alcohol volume
- Sales data is limited to spiritous liquor, does not include beer or wine
- Data only maintained at the local board level

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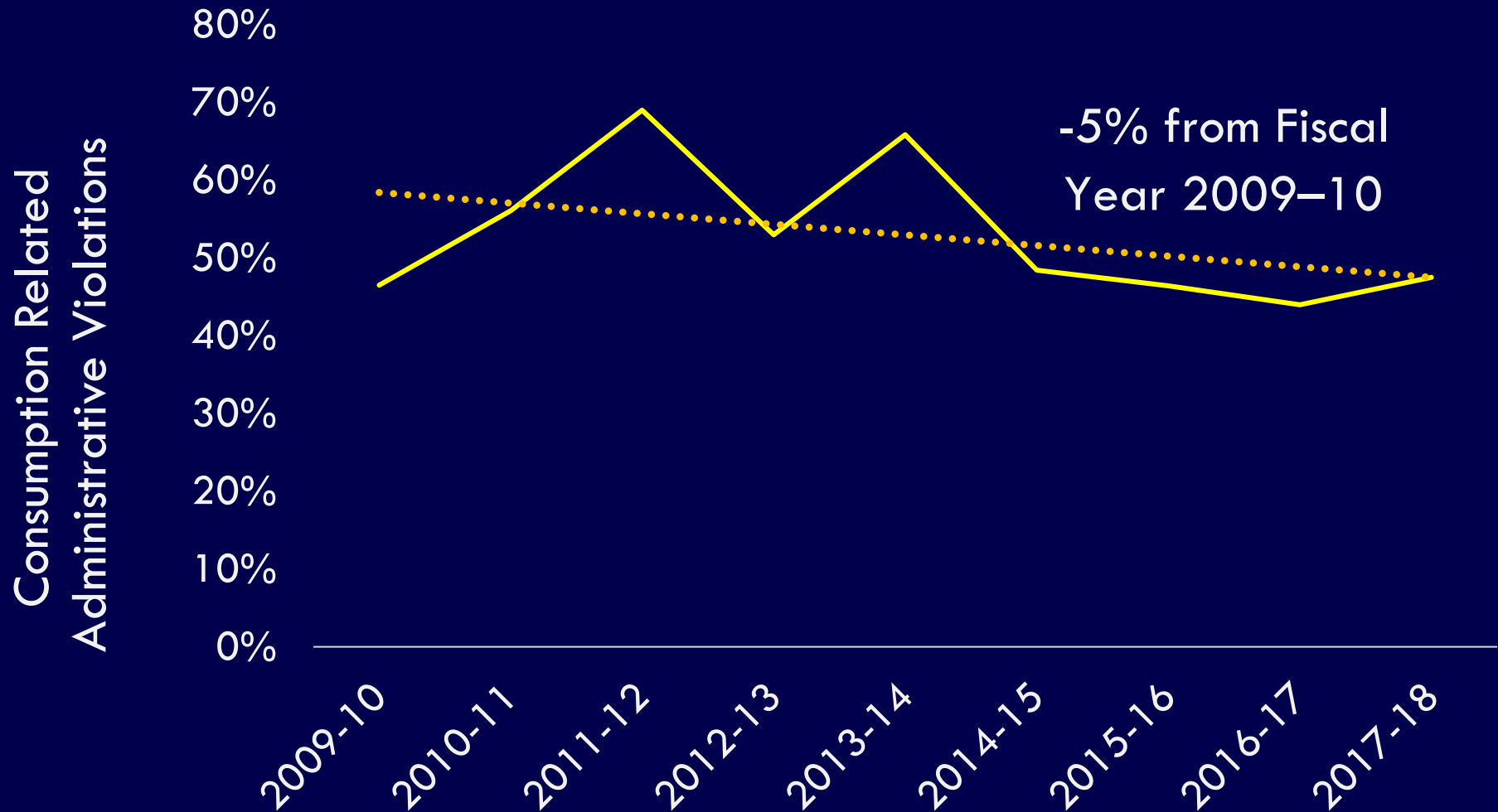
Finding 3

Consumption-related violations have decreased, suggesting administrative penalties are operating effectively, yet repeat offense rates have increased

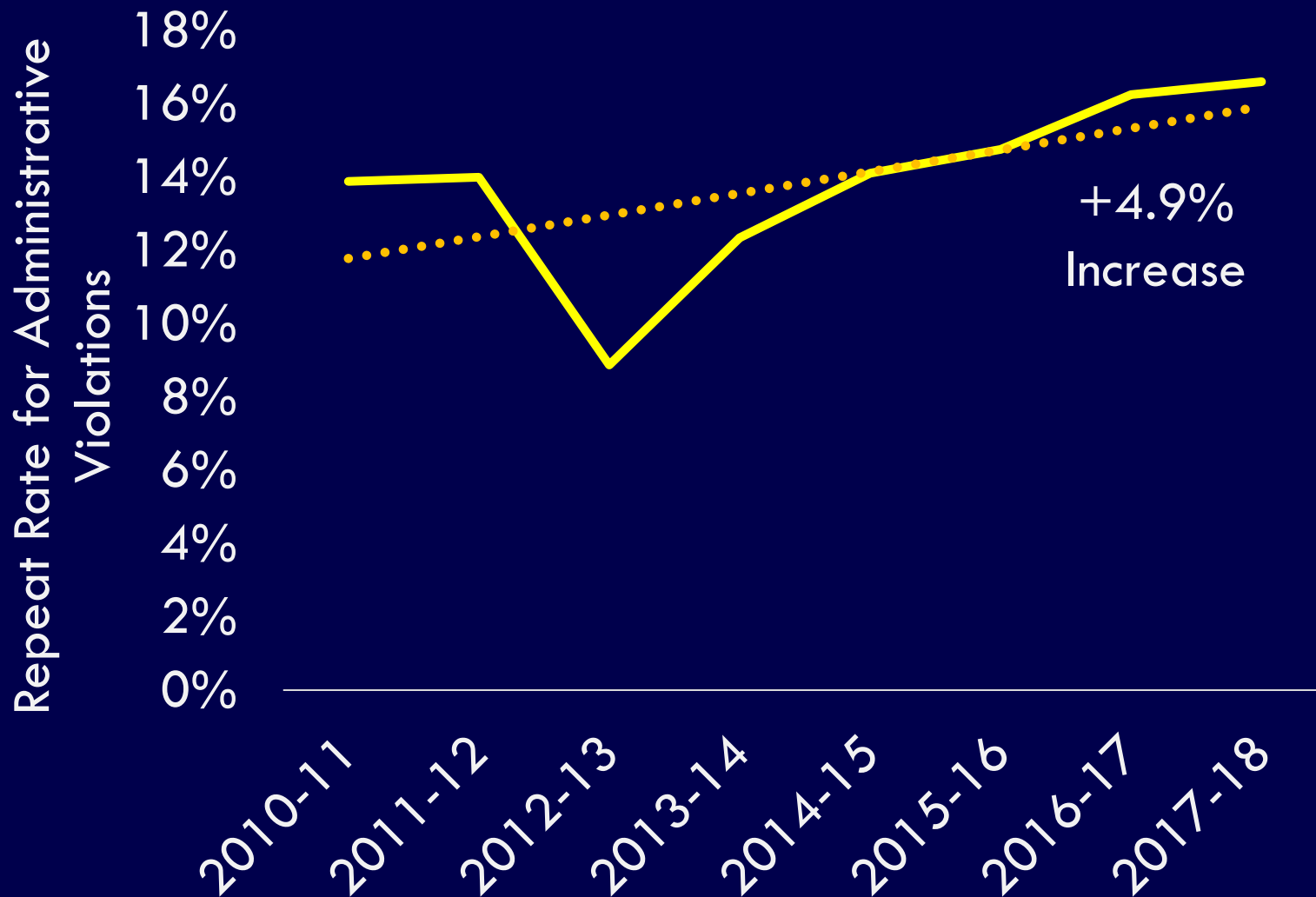
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Consumption-Related Violations Have Decreased



Repeat Violations Have Increased

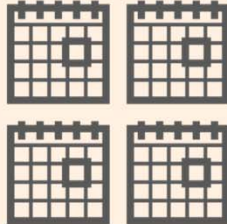
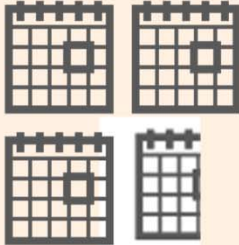




Finding 4

Though handling cases through the ABC Commission takes longer and costs more than adjudication through administrative court, differences in how the two entities function and the types of cases they process provide arguments against fully transferring responsibility to the courts



ABC Commission Takes Longer and Costs More than Administrative Courts

	ABC Commission	Administrative Hearing
Processing Time	118 Days 	108 Days 
Cost	\$215 per case 	\$134 per case 



Administrative Courts Should Not Replace the ABC Process

- Although the two procedures settle allegations of administrative violations, they are complementary, not duplicative
 - ABC Commission processes cases that are uncontested
 - Administrative courts serve as judicial option when a permittee disagrees with an allegation



Finding 5

Current law sufficiently covers all permittee activities that may be considered an administrative penalty

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Recommendations



Recommendation 1

The General Assembly should direct the ABC Commission to

- create policies and procedures that establish a rationale for administrative penalties,
- improve transparency for permittees, and
- report on opportunities and challenges in adopting a sales-based or volume-based system for penalties

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Recommendation 2

The General Assembly should direct the ABC Commission to establish effectiveness criteria to evaluate future efforts at deterring repeat violations

- percentage of permittees committing a violation
- percentage of consumption-related violations
- repeat offense rates

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Overview: Findings

1. Administrative penalties lack rationale along with policies and procedures, challenging objectivity
2. Administrative penalties are not proportional
3. Administrative penalties are operating effectively given the decrease in consumption-related cases; however, repeat violation rates have increased
4. The ABC Commission should continue handling administrative violations through the compromise process
5. Current law sufficiently covers all potential administrative violations



Overview: Recommendations

The General Assembly should

1. Direct the Commission to establish rationale, develop policies and procedures, make guidelines publicly available, and consider moving to a throughput-based system
2. Direct the Commission to report on the effectiveness criteria listed within this evaluation



Report available online at
www.ncleg.net/PED/Reports/reports.html

