

Trends in Dram Shop Liability for Furnishing Alcohol to a Minor

Between 2009 and 2011, the number of jurisdictions that permit dram shop liability remained constant and three States increased the dollar limits on damages.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract by The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For further information and background see:

Holder, H., Janes, K., Mosher, J., Saltz, R., Spurr, S., & Wagenaar, A. (1992). Final report: Evaluation of dram shop liability and the reduction of alcohol-related traffic problems. National Highway Traffic Safety Administration, DTNH22-87-R-07254.

Holder, H., et al. (1993). Alcoholic beverage server liability and the reduction of alcohol-involved problems. *J Stud Alcohol*, 54, 23–36.

Mosher, J., et al. (2011). *Liquor liability law*. Newark, NJ: LexisNexis.

14. SOCIAL HOST LIABILITY

Policy Description

Social host liability refers to the civil liability faced by noncommercial alcohol providers for injuries or damages caused by their intoxicated or underage drinking guests. The analysis in this Report does not address social host liability for serving adult guests. The typical factual scenario in legal cases arising from social host liability involves an underage drinking party at which the party host furnishes alcohol to a minor who in turn injures a third party in an alcohol-related incident (often a motor vehicle crash). In States with social host liability, injured third parties (“plaintiffs”) may be able to sue social hosts (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if injured private citizens file lawsuits. The State’s role is to provide a forum for such lawsuits; the State does not impose social host-related penalties directly. (As discussed below, this distinguishes social host liability from underage furnishing and host party policies, which can result in criminal liability imposed by the State.)

Social host liability is closely related to the furnishing alcohol to a minor and host party policy topics, but the three topics are distinct. Social hosts who furnish alcohol to minors or allow underage drinking parties on their property may face fines or other punishment imposed by the State as well as social host liability lawsuits filed by injured parties stemming from the same incident. Social host liability and dram shop liability (presented elsewhere in this Report) are identical policies except that the former involves lawsuits brought against noncommercial alcohol retailers, and the latter involves lawsuits filed against commercial alcohol providers.

Social host liability serves two purposes: (1) it creates disincentives for social hosts to furnish to minors due to the risk of litigation and potentially substantial monetary losses and (2) it allows those injured as a result of illegal furnishing of alcohol to minors to gain compensation from the person(s) responsible for their injuries. Minors causing injuries are the primary and most likely parties to be sued. Typically, social hosts are sued through social host liability claims when minors do not have the resources to fully compensate the injured parties.

Social host liability is established by statute or by a State court through “common law.” Common law refers to the authority of State courts to establish rules by which injured parties can seek redress against persons or entities that negligently or intentionally caused injuries. Courts have the authority to establish these rules only when State legislatures have not enacted their own statutes, in which case the courts must follow legislative dictates (unless found to be unconstitutional). Thus, social host statutes normally take precedence over social host common law court decisions.

Many States require evidence that social hosts furnished alcohol to the underage guest, although others permit liability if social hosts allowed underage guests to drink on the hosts’ property even if the hosts did not furnish the alcohol. This analysis does not report the States that have adopted this more permissive standard. The analysis includes both statutory and common law social host liability for each State.

A common law liability designation signifies that the State allows lawsuits by injured third parties against social hosts for the negligent service or provision of alcohol to minors in noncommercial settings. Common law liability assumes the following procedural and substantive rules:

- A negligence standard applies (i.e., defendants did not act as reasonable persons would be expected to act in similar circumstances). Plaintiffs need not show that defendants acted intentionally, willfully, or with actual knowledge of minors’ underage status.
- Damages are not arbitrarily limited. If successful in establishing negligence, plaintiffs receive actual damages and have the possibility of seeking punitive damages.
- Plaintiffs can pursue claims against defendants without regard for the age of the person who furnished the alcohol and the age of the underage person furnished with alcohol.
- Plaintiffs must only establish that minors were furnished with alcohol and that the furnishing contributed to injuries without regard to the minors’ intoxicated state at the time of the party.
- Plaintiffs must establish the key elements of lawsuits by “preponderance of the evidence” rather than a more rigorous standard (such as “beyond a reasonable doubt”).

A statutory liability designation indicates that a State has a social host liability statute. Statutory provisions can alter the common law rules listed above, restricting an injured party’s ability to make successful claims. This report includes three of the most important statutory limitations:

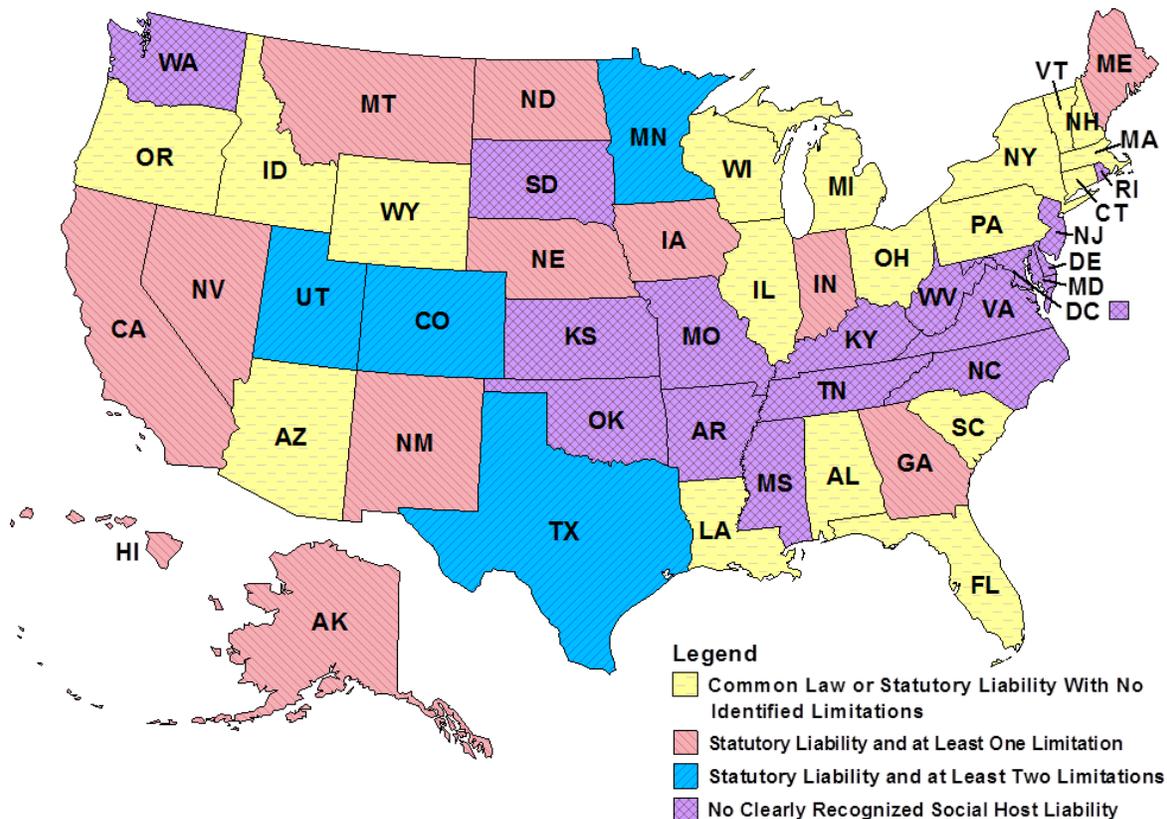
- Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through social host lawsuits.
- Limitations on who may be sued: Potential defendants may be limited to persons above a certain age.
- Limitations on elements or standards of proof: Statutes may require plaintiffs to prove additional facts or meet a more rigorous standard of proof than would normally apply in common law. The statutory provisions may require the plaintiff to:
 - Establish that hosts had knowledge that minors were underage or proof that social hosts intentionally or willfully served minors.
 - Establish that the minors were intoxicated at the time of service.
 - Provide clear and convincing evidence or evidence beyond a reasonable doubt that the allegations are true.

These limitations can limit the circumstances that can give rise to liability or greatly diminish plaintiffs' chances of prevailing in a social host liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Other restrictions in addition to the three listed above may also apply. For example, many States do not allow "first-party claims"—cases brought by the person who was furnished alcohol for his or her own injuries. This report does not track these additional limitations.

Status of Social Host Liability

As of January 1, 2011, 32 States impose social host liability through statute or common law, 17 jurisdictions do not impose social host liability, and in 2 States it is unclear (see Exhibit 4.3.29). Sixteen States have either common law liability or statutory social host liability with no identified limitations. The remaining 16 States impose one or more limits on statutory social host liability: 4 States limit the damages that may be recovered; 4 States limit who may be sued; and 12 States require standards of proof of wrongdoing that are stricter than usual negligence standards.

Exhibit 4.3.29: Common Law/Statutory Social Host Liability as of January 1, 2011



Trends in Social Host Liability for Furnishing Alcohol to a Minor

In the years between 2009 and 2011, the number of States that permit social host liability increased by one. California now requires standards of proof of wrongdoing that are stricter than usual negligence standards. Three States (Colorado, Illinois, and Utah) increased the dollar limits on damages.

References and Further Information

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract with The CDM Group, Inc. To see definitions of the variables for this policy, go to Appendix B. For additional information and background, see:

Mosher, J., et al. (2011). *Liquor liability law*. Newark, NJ: LexisNexis.

Stout, E., Sloan, A., Liang, L., & Davies, H. (2000). Reducing harmful alcohol-related behaviors: Effective regulatory methods. *J Stud Alcohol*, 61, 402–412.

15. HOSTING UNDERAGE DRINKING PARTIES

Policy Description

Host party laws establish State-imposed liability against individuals (social hosts) responsible for underage drinking events on property they own, lease, or otherwise control. The primary purpose of these laws is to deter underage drinking parties by raising the legal risk for individuals who allow underage drinking events on property they own, lease, or otherwise control. Underage drinking parties pose significant public health risks. They are high-risk settings for binge drinking and associated alcohol problems including impaired driving. Young drinkers are often introduced to heavy drinking behaviors at these events. Law enforcement officials report that, in many cases, underage drinking parties occur on private property, but the adult responsible for the property is not present or cannot be shown to have furnished the alcohol. Host party laws address this issue by providing a legal basis for holding persons responsible for parties on their property whether or not they provided alcohol to minors.

Host party laws often are closely linked to laws prohibiting the furnishing of alcohol to minors (analyzed elsewhere in this Report), although laws that prohibit the hosting of underage drinking parties may apply without regard to who furnishes the alcohol. Hosts who allow underage drinking on their property and also supply the alcohol consumed or possessed by the minors may be in violation of two distinct laws: furnishing alcohol to a minor and allowing underage drinking to occur on property they control.

Two general types of liability may apply to those who host underage drinking parties. The first, analyzed here, concerns State-imposed liability. State-imposed liability involves a statutory prohibition that is enforced by the State, generally through criminal proceedings that can lead to sanctions such as fines or imprisonment. The second, social host liability (analyzed elsewhere in this Report), involves an action by a private party seeking monetary damages for injuries that result from permitting underage drinking on the host's premises.

Although related, these two forms of liability are distinct. For example, an individual may allow a minor to drink alcohol after which the minor causes a motor vehicle crash that injures an innocent third party. In this situation, the social host may be prosecuted by the State under a criminal statute and face a fine or imprisonment for the criminal violation. In a State that provides for social host civil liability, the injured third party could also sue the host for monetary damages associated with the motor vehicle crash.

State host party laws differ across multiple dimensions, including the following: