

2014

**ENVIRONMENTAL STRATEGY
RESOURCE GUIDE: Social Host
Liability**



Resource Guide Overview

This document serves as a resource to the Georgia Strategic Prevention Systems Alcohol Prevention Project (GASPS APP). The primary purpose of this resource guide is to provide models, templates and examples of environmental strategies.

All documents are searchable within the pdf document except those notated with *, indicating document is non-searchable.

Social Host Contents

ARCHS Institute, Holding Adults Accountable for Underage Drinking at House Parties through Social Host Laws	1-15
Virginia Department of Alcoholic Beverage Control, Education, Parental Guide to Hosting Responsible Teen Parties	16-26
SUFFOLK UNIVERSITY LAW REVIEW, Social Host Liability and the Distribution of Alcohol and Narcotics: A Survey and Guide	27-64
SAMHSA Technical Report, Preventing Underage Drinking (Social Host Liability Laws)*	66-80
Ventura County Limits, Model Social Host Liability Ordinance	81-106
WA State Coalition to Reduce Underage Drinking, Drafting a Social Host Ordinance: A How-To Guide for Washington State Communities	107-146
Town Hall Meetings 2012, Social Host Liability Laws Factsheet (Example)	147-148
Virginia Alcohol Safety Action Program (VASAP), Life of the Party	149-152



Applied Research for Community Health & Safety

Holding Adults Accountable for Underage Drinking at House Parties through Social Host Laws

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Executive Summary

Research shows that underage drinking is a major threat to the health and safety of youth, not only with drinking and driving, which is a major cause of death among teens, but also with a host of other negative consequences such as lowered academic performance, sexual assault, fights and violence resulting in personal injury. And the earlier a young person is exposed to alcohol the more likely they are to develop life-long drinking problems.

However, despite legal prohibitions against anyone providing alcohol to minors, it is still easy for them to obtain, especially at house parties. Such gatherings have been shown to be the primary source for alcohol for underage youth; and alcohol is available at gatherings of teens, research shows they tend to drink more heavily than they would in some other venues. Even so, there are some adults who are willing to provide alcohol at such venues because they believe young people will be drinking anyway and it will be less harmful if it is supervised. However, the evidence indicates both of these assumptions are false.

Reducing access to alcohol is considered to be one of the best strategies for prevention. However, laws that were developed for this purpose (prohibitions against possession, intoxication, and providing alcohol to a minor) are difficult to enforce. For this reason, laws that make the hosting of underage drinking parties illegal – also known as social host accountability laws – have become increasingly popular in states as well as local municipalities. In California, where the state law against social hosting is weak, many cities and counties have passed local ordinances to compensate.

Many types and variations of social host laws have been passed, some with civil penalties, some with criminal, some with a combination of both. Such laws hold either the actual host of the party or the owner of the property accountable for any disruptive behavior and/or underage drinking that is going on, regardless who provided the alcohol. This allows law enforcement to issue citations without having to establish who actually provided the alcohol, which is often difficult to prove. They can also cite the minor for having consumed alcohol without having to establish possession or intoxication. As such, social host laws provide an additional tool for law enforcement to address underage drinking.

As social host ordinances have been implemented only recently, there is limited research to establish their effectiveness. But because of the powerful message they send and the potential they have for reducing youth access, such laws are recognized as best practices by leading prevention and research institutions. However, it has been noted that to be consistently effective, social host laws need to be publicized so that hosts understand their potential liabilities. This should include information designed to disabuse adults of the idea that underage drinking is not harmful as long as the youth are not allowed to drink and drive. Training programs from law enforcement agencies and their personnel should also be planned so that line officers are familiar with the procedures involved with issuing citations. Finally, additional research should be conducted to measure the impact social host laws have on underage drinking rates and the problems that result.

Background

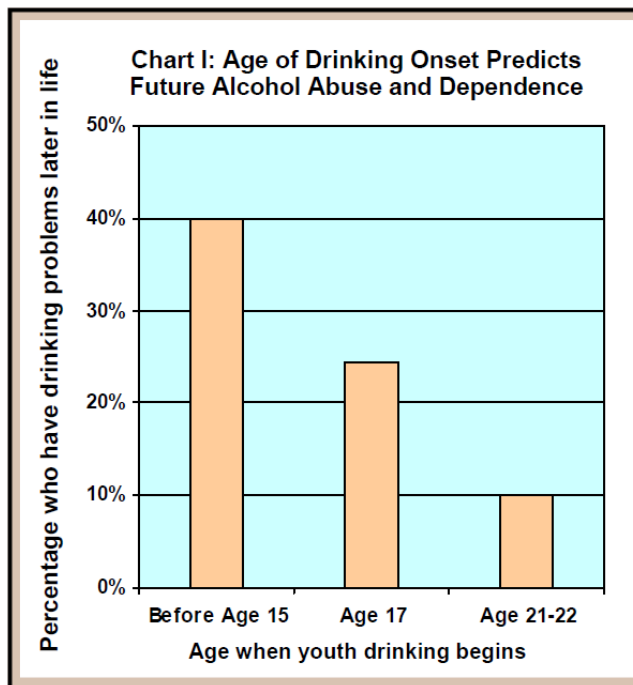
Alcohol, the Top Threat to Youth

Alcohol is the number-one drug of choice for American youth¹ and the leading cause of death among teenagers.² As such, it’s involved in the deaths of more teens than all other illicit drugs combined — by a ratio of four to one. This includes nearly half of all fatal teen automobile crashes and 50 to 65 percent of youth suicides.³ Alcohol abuse has also been linked to as many as two-thirds of all sexual assaults and date rapes of teens and college students. In addition, it is a major factor in unprotected sex and other high-risk behavior among youth.²

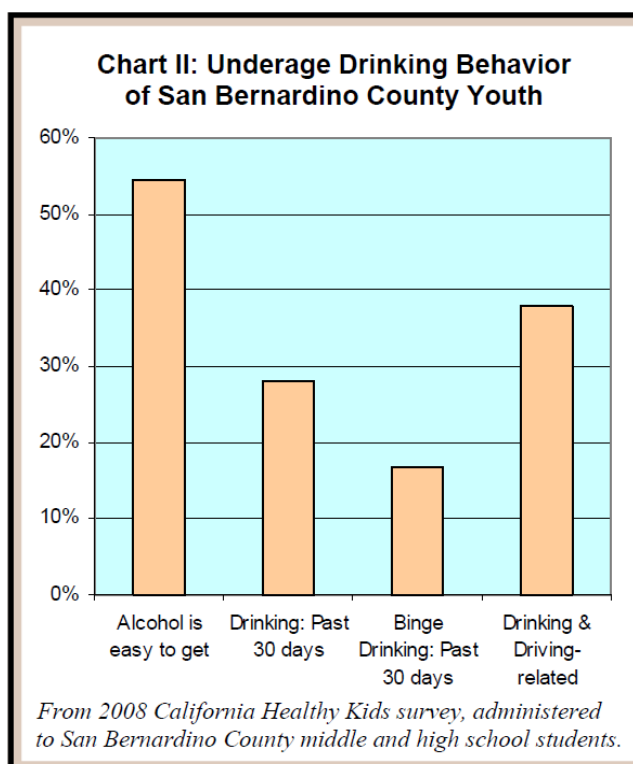
Even so, many still cling to the belief that underage drinking is an inevitable “rite of passage” and that youth are so determined to drink, that no prevention efforts can ever be truly successful. Some also believe that underage drinking need not be harmful as long as it is supervised and/or the youth are not allowed to drive while intoxicated. They argue that young people can easily recover from any physiological harm because their bodies are more resilient than those of adults. However, studies show just the opposite: the brain changes dramatically during adolescence and its development can be seriously inhibited by alcohol consumption. Such damage is often long-term and irreversible. Even short-term or moderate drinking impairs learning and memory far more among youth than adults.⁴ Adolescents need to drink only half as much as adults to suffer the same negative effects.⁵

Furthermore, youth who begin drinking early are more likely to develop long term alcohol-related problems later in life. For example, those who have their first drink before the age of 15 are four times more likely to become dependent on alcohol than those who wait to begin drinking until age 21.⁶ Those who begin drinking before age 13 are twice as likely to have unplanned and unprotected sex during college as those who do not start drinking until after age 19.⁷

Finally, research also indicates that neither underage nor binge drinking among youth is inevitable. To the contrary, the prevalence of such activity can be reduced through policy changes at the state and local level.^{2,8} This would include stronger regulations to prevent youth from obtaining alcohol from commercial sources such as bars and restaurants; also laws that reduce availability in social settings such as house parties on private property.



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The Extent of the Underage Drinking

Underage drinking is a major problem in San Bernardino County where, on the average, youth have their first experience with alcohol at the age of 12.⁹ Part of the reason is easy access, as 55 percent of the county’s teens report that alcohol is easy for them to get, according to the California Healthy Kids Survey.⁹ Other data show that local teens are consuming alcohol at high rates and some are engaging in risky behavior while intoxicated. This includes almost 40 percent reporting driving after drinking or being in a car with someone else who had been drinking. (See Chart II)

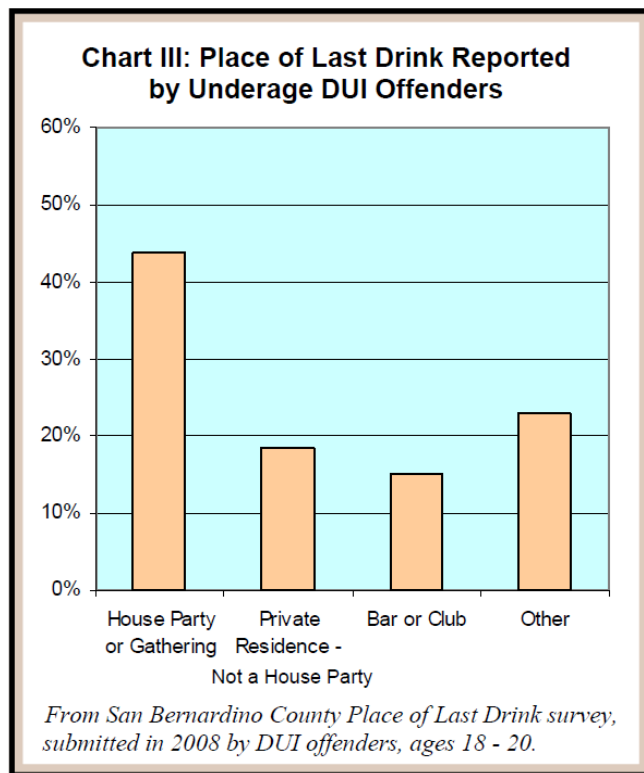
The full impact of this problem is hard to estimate as alcohol-related events involving underage youth often go underreported. However, in California records are kept of such incidents where emergency services are required. In 2008, there were 13 incidents of this kind reported in San Bernardino County, seven of which resulted in fatalities, more than any other county in the State.¹⁰ However, this represents only the tip of the iceberg since these statistics do not include the many consequences of underage drinking referred to earlier that do not take place until later on in life.

House Parties: The Primary Source of Alcohol

National and local research studies have repeatedly identified house parties as the primary source from which minors obtain alcohol.^{11,12,13} Moreover, young people report their heaviest drinking takes place during large parties with their peers — almost all of whom are underage — at someone else’s residence.¹¹ Such gatherings also provide a venue for introducing young teens to a heavy drinking culture. In one study, older teens (ages 17 – 19) reported “breaking in” younger teens (ages 14 – 16) at teen parties by encouraging them to become very intoxicated.¹⁴

In an effort to keep people safe, the hosts of such parties will sometimes take steps to ensure that no one will be able to drive. However, DUI-related incidents still take place all too often. For example, in San Bernardino County data collected from underage DUI offenders show that 44 percent of them did their drinking at a house party and/or gathering prior to being arrested.¹³ It should also be noted that another 18 percent reported drinking at a private residence, although the occasion was not identified as a house party. (See Chart III)

Even if young people do not drive after drinking at a house party, it has been shown that many other negative consequences such as fights, vandalism, property damage, personal injury and sexual assaults are likely to occur.^{6,7} Furthermore, data collected in San Bernardino County show that in traumatic incidents stemming from underage drinking—the ones in which severe injury or death results—the alcohol was obtained at a house party over 38 percent of the time.¹⁰



Social Host Accountability Laws

A social host is an individual who makes alcohol available in a social setting such as a party or gathering held on private property. This is distinguished from alcohol that is sold or otherwise made available by businesses in commercial settings such as a bar, club or restaurant. Social host accountability laws are designed to hold private individuals responsible for any underage drinking that takes place at parties or gatherings on property they own, lease or otherwise control. Such laws usually apply to residential property as there are a different set of laws in place that regulate alcohol in commercial settings. However, there are some social host laws targeting hotels and motels, as these are sometimes the venues for teen parties sponsored by private individuals, especially during graduation or prom season.¹⁵

While it is already illegal to provide alcohol to anyone under the age of 21, enforcing the law can be difficult. When law enforcement officials arrive on the scene of an underage drinking party, it is often hard to determine who furnished the alcohol. However, through social host laws the host of the party can now be held accountable regardless of who provided the alcohol.¹⁶ As such, social host laws can be a more effective way to address underage drinking at house parties.

Types of Social Host Laws

In general, there are two different types of social host laws. The first are civil laws that assign financial liability to social hosts for damages that result from a drinking party. The second are criminal laws, either at the state or local level, which make it illegal to be the host of a party where underage drinking takes place.

1. Civil Laws

Civil social host laws include state laws that allow private parties to sue a social host for personal injuries caused by an underage person who became intoxicated at the host's party. At the state level, such laws are based on court decisions or state statutes on negligence. The following 33 states currently have laws of this type:

Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Iowa, Idaho, Indiana, Louisiana, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, Wisconsin, Wyoming¹⁷

Many local ordinances also contain civil penalties for loud or unruly parties or ones where underage drinking occurs. Here the offense is treated as a public nuisance with monetary administrative penalties, community service, education and/or counseling. There may also be a response cost recovery allowance that empowers the city or county to recover law enforcement costs incurred while responding to a party where a disturbance has been reported. Usually this occurs only when law enforcement must visit a given location on a number of occasions. In some cases, money collected is used to fund the enforcement of the ordinance itself.

2. Criminal Laws

As with civil laws, criminal social host laws can be found at both the state and local level, but both kinds of laws make it illegal to host an underage drinking party. State laws, which have become increasingly popular in recent years, make it a misdemeanor to host such a party. As of January 1, 2008, there were 23 states with social host criminal statutes.¹⁸ City and county ordinances containing criminal penalties, either a misdemeanor or an infraction, have also become a growing trend. According to the Pacific Institute for Research & Evaluation, there are currently more than 160 local ordinances of this kind in 21 different states.¹⁹

Criminal vs. Civil Social Host Laws

While criminal laws have stronger penalties, they may be more difficult to enforce as prosecutors usually give infractions and misdemeanors a lower priority. Furthermore, criminal penalties require a higher standard of proof than do of civil ones, which can be adjudicated outside the criminal justice system. In criminal proceedings there must also be “prima facie” evidence that the defendant – the person in control of the premises – “knew or should have known” that minors were consuming alcohol. This is not usually required in civil cases where monetary fines rather than time in jail are the penalties being considered. The differences between criminal and civil laws are summarized in Table 1, below.

Table 1: Criminal vs. Civil Social Host Ordinances

Criminal	Civil
Prosecutors give infractions and misdemeanors low priority.	A civil case can be addressed in a proceeding before the city, outside the criminal justice system.
Burden of proof: beyond a reasonable doubt.	Burden of proof: a preponderance of the evidence.
Must show that the defendant knowingly allowed underage drinking/possession to occur on private property; that is, defendant knew or should have known of presence minors and failed to take steps to prevent underage drinking.	Strictly civil fines may or may not require proof that the responsible person knowingly allowed service of alcohol to persons under 21 or underage drinking/possession to occur.

These differences suggest that civil penalties will be swifter and thus more effective to impose than criminal penalties. However, in communities where violence occurs at an unruly or underage gathering, it is recommended that criminal penalties also be available.¹⁹ It may also be true that in particular counties, infractions (treating social hosting like a parking ticket) move as swiftly through the courts as civil penalties move through a city or county’s own administrative process. This is likely to be the case in San Bernardino County.

Elements of Social Host Laws

Social host accountability laws often contain multiple elements, especially those passed by local municipalities. These typically include a definition of a party or gathering, a prohibition against allowing underage drinking at such an event, a provision defining who is regarded as the responsible party, restrictions against loud or unruly conduct, notations on the constitutional limitations, a section on penalties and a description of the appeal process.¹⁹ These elements are discussed in more details below.

1. Definition of Gathering

Ordinances of most cities and counties define a gathering as two or more persons gathered together in a setting where alcohol is being consumed, possessed, or served to minor. However, these laws are not intended to address incidents with such a small number of participants. The number is set this low so that law enforcement may issue citations regardless of how many are involved. Law enforcement officers will typically respond to an incident only upon complaint from a neighbor that disruptive behavior is going on. So there would usually be a significant number of people involved and/or some kind of illegal behavior sufficient to cause alarm by nearby residents.

Along with the definition of the gathering, there is usually a description of the kinds of locations where the ordinance will be in force. As mentioned earlier this is usually a private residence, either in single-family or multi-housing units. Sometimes ordinances specify other locations that have been identified as being problematic in the community. These may include motels and hotels or public facilities where weddings, picnics or private parties take place. In such ordinances specific requirements related to the venue, such as monitoring of mini-bars or obtaining a special event permit, may be imposed.

2. Prohibition against Underage Drinking:

Underage consumption of alcohol is a key element of many social host ordinances. Without this element, it would not be technically illegal for minors to drink on private property, as most current laws make only possession and being intoxicated illegal. But when the drinking takes place at a private residence, possession of alcohol by a given individual is difficult to prove, and to establish intoxication, law enforcement must have observable evidence before they can administer any kind of test. However, when consumption has been made illegal, a law enforcement officer may conduct a breathalyzer test of any minors present; and if the test is positive for any alcohol consumption, the minor can be cited as well as the host of the party. (Note: the combination of factors – being called to a party because of disruptive behavior, noting young people present and seeing that alcohol is being served – constitutes probable cause for law enforcement officers to conduct the breathalyzer test.)

3. Loud or unruly conduct:

Many ordinances contain at least a section with noise-restrictions that are consistent with local codes regarding allowable levels of noise during specified hours. However, other types of disruptive behavior such as fights, property damage, public urination and a host of others may also be included. Violations of such a section do not require that underage drinking is taking place.

4. Responsible Persons:

Nearly all ordinances identify property owners as persons that can be held responsible for violations. However, if some other party has control of the property during the time period in which the party may be taking place, such as renters or lessees, those persons are usually the ones cited. This is especially true in a criminal case, as according to the doctrine of “prima facie” evidence, the person held responsible must have knowledge of the underage drinking. So if they are not at the location at the time of the gathering, they can not be held responsible unless it is proven that the party was held with their knowledge and/or consent. On the other hand, if they are physically at the location of the gathering, they can not use lack of knowledge as a defense, as most often there is some kind of “duty to inspect” that is imposed. This includes taking reasonable steps, such as the following, to ensure that minors do not have access to alcohol:

- Control access to alcoholic beverages
- Control the quantity of alcoholic beverages present
- Verify the age of persons attending the gathering by inspecting drivers’ licenses or other government-issued identification cards
- Supervise the activities of minors

With regard to civil cases, a person need not be present at the gathering to be held responsible, but some kind of knowledge on their part that problems are occurring has to be established. Therefore, if absent from the property at the time of the party, the property owner is not held responsible until they have received at least one notice that illegal behavior is taking place. An exception to this rule would be if the violator was a juvenile who acted as the host while his or her parents were away. This would be fall under a provision known as “Joint and Several Liability,” where the parents can be held accountable, at least for civil penalties, even if they were away and had no knowledge of what was going on.

5. Penalties:

Depending on the city or county, violation may be punishable as an infraction, a criminal misdemeanor, and/or treated as a civil public nuisance. As mentioned above, the infraction is tantamount to a parking ticket, although it can be much more costly, up to \$2500.00 per occasion. There is a fine of \$1000 with a misdemeanor charge in most California municipalities, but jail time may also result up to a maximum of six months. However, this is usually waived in favor of community service, education or counseling. Cost recovery for law enforcement services can also be substantial. These may include a cost \$75.00 per hour for each officer involved in the incident, any medical expense incurred, the cost of city/county property that is damaged or destroyed as well as attorney’s fees if the case goes to litigation.²⁰ Any or all of these penalties may be imposed depending upon the seriousness of the case.

Table 2: Penalties Listed in Social Host Ordinances

Type	Penalty
Criminal infraction	Monetary fine
Criminal misdemeanor	Monetary fine and/or up to 6 months’ imprisonment
Civil public nuisance	<ul style="list-style-type: none"> • Civil/administrative monetary penalties • Community service, education, counseling • Civil/administrative response cost recovery

6. Process to Challenge Penalties:

There can also be a description of the hearing process and the right of the violator to appeal to the courts. This usually includes a notification procedure showing how violator is made aware of the penalties being assessed as well as his or her rights to be heard and offer a defense.

7. Constitutional Limitations

There are constitutional protections in some states, ensuring a parent’s right to provide alcohol to their children on certain occasions, at least in limited amounts. In California, this includes the use of alcohol in religious ceremonies conducted by an ordained minister; also the right of a parent or legal guardian, at his or her discretion, to provide alcohol to his or her child at a family gathering, such as a glass of wine with dinner. These rights do not extend to the children of other parents, however.

Social Host Laws in California

As noted previously, many states have civil and/or criminal social host laws. However, California is not one of them. To the contrary, in California the laws on hosting of underage drinking parties are weak. The only criminal penalty is for a parent or legal guardian who knowingly allows his/her child to drink

and then drive. But this law only applies if the child is under the age of 18, has a BAC over .05 and is subsequently the cause of a collision.²¹ Moreover, the State Civil Code specifically exempts social hosts from any responsibility for damages resulting from alcohol consumption at the host’s party:

“No social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.”²²

Because of the weakness of the state law, many California cities and counties have compensated by passing local social host ordinances. This is allowable because the state constitution, while granting the exclusive right and power to the state to regulate alcohol-related commercial activities,²³ leaves local municipalities free to regulate consumption of alcohol.²⁴

To date there seven counties and over 50 cities throughout California have taken advantage of this authority and passed some version of a social host law.¹⁸ These are listed in Table 3, below. Ordinances with civil penalties and provisions for cost recover are the most common type, but a substantial number also have criminal penalties. These are listed in Table 4.

Table 3: California Municipalities with Social Host Ordinances

Counties	Cities				
Contra Costa	Agoura Hills	Escondido	Modesto	Palo Alto	Santa Paula
Fresno	Benicia	Fairfax	Morgan Hill	Petaluma	Santa Rosa
Marin	Berkeley (2)	Fillmore	Moorpark	Poway	Santee
Mono	Camarillo	Gilroy	Moreno Valley	Port Hueneme	Thousand Oaks
Napa	Carpintería	La Mesa	Newman	Ross	Tiburon
San Diego	Ceres	Lemon Grove	Norco	Roanoke Park	Vallejo
Ventura	Chula Vista	La Puente	Novato	San Anselmo	Ventura
	Clearlake	Los Altos	Oceanside	San Diego	Vista
	Corona	Los Gatos	Ojai	San Marcos	Waterford
	El Cajón	Mammoth Lakes	Ontario	San Rafael	
	Encinitas	Manhattan Beach	Oxnard	Santa Cruz City	

Table 4: California Municipalities by Types of Civil and Criminal Penalties

Civil Penalty Types	Number	Criminal Penalty Types	Number
Response Costs Recovery	43	Infractions	3
Civil Remedies	15	Misdemeanors	18
Administrative Remedies	14	Either Infractions or Misdemeanors	10

Effectiveness of Social Host Ordinances

Evidence supporting the effectiveness of social host laws comes from several different sources. These include recommendations from a 2003 report published jointly by the National Research Council and Institute of Medicine.²⁵ There is also a set of “Best Practices” for substance abuse prevention published by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) that includes social host and other teen party ordinances.¹⁴ This document was developed by the Pacific Institute for Research and Evaluation (PIRE), one of the nation’s preeminent independent nonprofit public health organizations. In 2008, this group also published a review of social host liability research.²⁶ Although they found only mixed results, the analysis was limited to civil ordinances. Finally, from a case study of the

implementation of a social host criminal ordinance in the City of San Diego, there are results showing a decline in house party related calls for service after the ordinance was passed. These findings are summarized below.

1. National Research Council & Institute of Medicine Report

In the landmark report, *Reducing Underage Drinking – A Collective Responsibility*, these two groups joined together to provide a comprehensive review of the problems of underage drinking and their growing seriousness. Developed for anyone concerned with youth health and safety, the report established a series of strategies, based on scientific evidence, for reducing such problems. These included taking action to control both commercial and social sources of alcohol. Recommendations 9-12 of the report, included below, address what can be done about underage drinking parties.²⁴

Local police, working with community leaders, should adopt and announce policies for detecting and terminating underage drinking parties, including:

- Routinely responding to complaints from the public about noisy teenage parties and entering the premises where there is probable cause to suspect underage drinking is taking place
- Routinely checking, as part of regular weekend patrols, open areas where teenage drinking parties are known to occur
- Routinely citing underage drinkers and, if possible, the person who supplied the alcohol when underage drinking is observed as parties.

2. OJJDP Best Practices

In their report: *Regulatory Strategies for Preventing Youth Access to Alcohol*, OJJDP lists the following recommendation for addressing youth consumption at underage drinking parties, which they identify as one of the highest risk settings for youth consumption:

- Best Practice #14: Implement teen party ordinances: Prohibit teen drinking parties at private residences, and impose fines and fees on homeowners or renters for law enforcement services.

This kind of law, they propose, provides law enforcement an additional legal basis for investigating teen parties at private residences. They also recommend specific laws for hotels and motels, requiring management to provide adequate security and holding them liable if they negligently rent rooms for teenage parties.¹⁴

3. Research on Social Host Liability Laws

According to the review of such laws published by PIRE in 2008, there is very little research on the effectiveness of social host liability laws and what evidence exists is conflicting. One study found such laws were associated with decreases in alcohol-related traffic fatalities among adults, but not among minors. However, no reduction in single-vehicle nighttime crashes was noted for either group. Another study found decreases in reported heavy drinking and in drinking and driving by lighter drinkers, but no such effect was noted for heavier drinkers. According to PIRE, the conflicting findings may reflect the lack of a comprehensive program that insures that social hosts are aware of their potential liability. That social host liability laws send a powerful message is acknowledged in their report, but they suggest the message must be effectively disseminated before it can have a consistent deterrent effect.

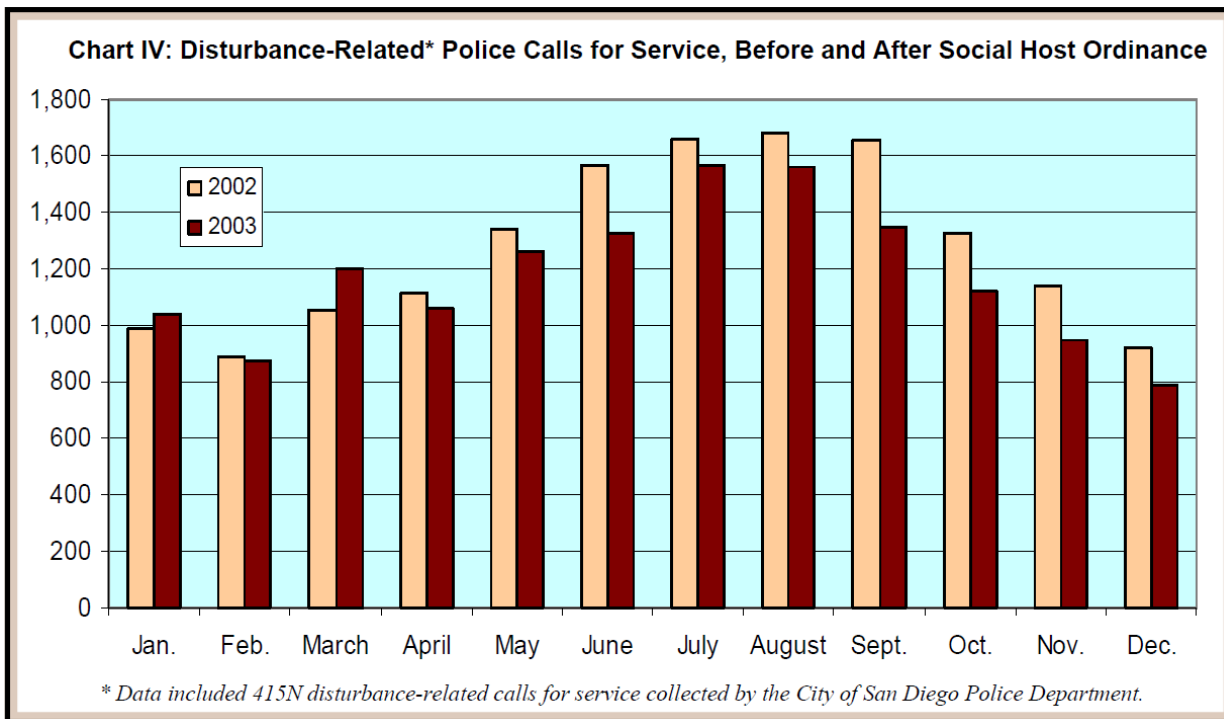
As mentioned above, it should be noted that this research only applies to social host liability laws or those that impose civil penalties. Still, it is reasonable to assume that the same limitations would apply to criminal ordinance, i.e. unless the potential penalties are well communicated to the general public, such laws can be expected to have little effect. But, it

should also be noted that the research studies referred to used only drinking and driving-related incidents as an outcome measure, e.g. traffic fatalities, nighttime crashes and reported incidents of drinking and driving. However, other data show that such incidents are only partially related to underage drinking parties, as only about one-third of DUI-related crashes involving youth where trauma results can be shown to originate at house-party situations.¹⁰

4. Reduction in Disturbance for Service: City of San Diego

One of the first cities in California to pass a social host ordinance was San Diego. The law, adopted in May, 2003, applied criminal penalties only with violators being charged with a misdemeanor. The law was intended to deal with college drinking parties, mostly in the vicinity of San Diego State University, which was known as one of the nation’s top party schools. Such parties often resulted in violence with students being transported to the hospital for emergency services. A great deal of police time and resources was also needed to deal with these incidents. Therefore, when measuring the effectiveness of the ordinance, reductions in police calls for service were used as the indicator for a successful outcome.

It should be noted that the San Diego Police Department does not collect routine data about police calls for service at underage drinking parties. Therefore, they were able to track only the general disturbance calls for service know as a 415. However, in the year following the implementation of the ordinance, they found an eight percent reduction these kinds of police calls. (See Chart IV)



It should also be noted that in 2004 the San Diego ordinance was challenged on grounds of constitutionality. After hearing the case, the California Court of Appeal did find fault with the law in that it held adults criminally responsible for underage drinking parties on their property, even if they were out of town and had no knowledge that such an incident was taking place. The court took the position that simply leaving unsupervised minors alone in the house for an extended period of time was not sufficient cause for parents to expect that some kind of trouble

would result. While prevention advocates disagreed with this position, the ordinance was revised to exclude those not present at the location from being liable unless it could be shown that they had specific knowledge of the event, such as giving permission for it to take place. The new ordinance, subsequently implemented in 2006, also included the provision imposing the “duty to inspect” of the host that is on the premises of a location where minors are present and alcohol is being served. This ordinance currently serves as a model for other cities to follow.

Enforcement Issues

Using the City of San Diego’s law as their model, most other cities in San Diego County, as well as the County itself, went on to adopt criminal versions of the social host ordinance. But enforcement seemed inconsistent at best, most of it taking place only in the City of San Diego. From follow-up interviews it was determined that lack of awareness was at least part of the problem. So a series of trainings for law enforcement personnel was conducted by county-funded prevention service providers. The trainings took place between August and September of 2008, with 232 local police officers and/or sheriff’s deputies from six different cities attending. A survey conducted in conjunction with the training identified the following issues.

1. Lack of Awareness Regarding the Social Host Ordinance

Lack of awareness was an issue but it varied from city to city and was pronounced in only one city. Overall, only about 30 percent of the officers said they were unaware of the ordinance before the training. However, in one city that number rose to 70 percent. In two of the cities the percentage of those aware of the ordinance was roughly equivalent to those that were unaware. As expected, in cities where awareness was greater, there were more citations for violations of the ordinance.

2. Underage Drinking as a Priority

The perception of underage drinking at house parties as a priority as compared with other crimes also varied from city to city. Most of the officers saw the problem as a medium priority, but there was disagreement in different cities with the percentage ranging from 40 – 70 percent. The percentage that saw the problem as having a low priority also varied significantly, ranging from 20 – 60 percent. Only a very few assigned the problem a high priority, but those cities were typically the ones that were issuing the most citations.

3. Social Host Ordinances as an Effective Tool

There was greater agreement about the ordinance being an effective tool, with about 70 percent of the officers believing that it was. However, once again there was seemed to be a substantial variance from city to city with percentages ranged from just over 50 to just under 90.

4. Problems with Enforcement

Despite the fact that the vast majority of law enforcement personnel felt that their local social host ordinance was an effective tool to deal with underage drinking parties, a substantial number, about 25 percent, felt that there would be problems in trying to enforce the law. About half were undecided about this issue with the remaining 25 percent reporting seeing no such problem. Most of the obstacles to enforcement sited had to do with a lack of resources, according to follow-up interviews with selected officers. However, specific problems with enforcement in rural areas, where officers were acquainted with many of the local residents, were also mentioned.

Support for Social Host Laws

As mentioned previously, there is support for social host laws from some of the nation’s top institutions involved in substance abuse prevention, research and enforcement. These include the National

Research Council, the Institute of Medicine and the Office of Juvenile Justice and Delinquency Prevention, which has listed social host laws as a “Best Practice.” In addition, popular support for such laws is also high. For example, 80 percent of respondents in a national study supported increased penalties for adults who illegally provide alcohol to minors.²⁷ A recent survey of San Bernardino County residents, conducted by regional substance abuse prevention advocates, also found support strong support. Sixty four percent of the respondents identified underage drinking parties as one of the three top problems in their communities and 57 percent agreed that adults should be held more accountable.

Finally, although there is mixed opinion among law enforcement officers about various aspects of social host laws, there seems to be a consistent belief among their ranks that such laws can be an effective tool for dealing with underage drinking parties. There has also been strong support among the leadership of California enforcement agencies, as many top officials have taken an active role in advocating for their passage in cities throughout the state. This seems also to be the case in San Bernardino County, as meetings with Sheriff’s Deputies to discuss the feasibility of a local social host ordinance has met with a positive response.

Conclusion & Recommendations

Underage drinking has been verified by research to be a major threat to the health and safety of youth, even more than other illicit drugs that are perceived to be more dangerous by the general public. Furthermore, underage drinking parties, sometimes hosted by adults in the mistaken belief that no harm will result, are the primary source of alcohol for underage youth, often being the venue where young people first have the opportunity to drink. Such parties have also been associated with heavy drinking and a variety of problems that extend into later life. Furthermore, research shows that the earlier young people are exposed to alcohol the more likely they are to develop such problems.

Reducing access to alcohol is considered to be one of the best strategies for prevention. However, laws for this purpose that are currently in effect have been shown to be difficult to enforce. For this reason, social host laws that provide law enforcement an additional tool could prove to be a viable alternative for San Bernardino County, especially given the support from law enforcement and local residents. An ordinance with a combination of both civil and criminal penalties seems the most reasonable approach. However, for it to be effective there would need to be a public awareness campaign advising potential hosts of their liability under the new laws. A training program from law enforcement agencies and their personnel should also be planned so that line officers are familiar with the procedures involved with issuing citations.

To better document the effectiveness of social host laws, research showing the impact of such laws on ease of youth access to alcohol is needed. Long-term research focusing on any changes in the prevalence of negative consequences of underage drinking after such laws are implemented would also help to establish effectiveness.

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20 Social host ordinances from Ventura County, The City of Colton and The City of Ontario.

21 Business & Professions code, § 25658.2

22 California Civil Code, Section 1714 (b) & (c)

23 According to Article XX, section 22 of the California Constitution, the state has the exclusive right and power to regulate alcohol-related commercial activities. These include the manufacture, sale, purchase, possession and transportation of alcoholic beverages.

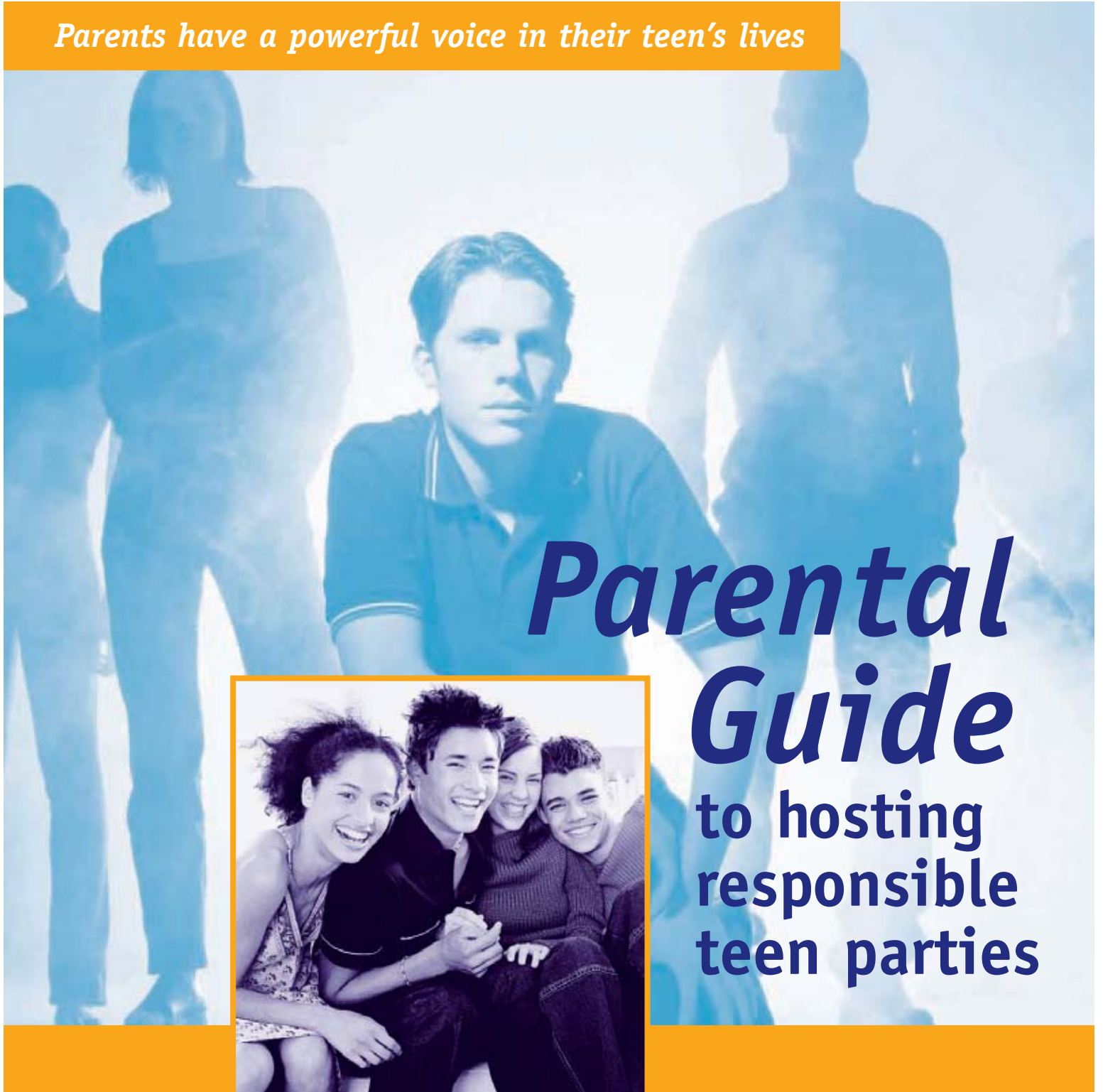
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Parents have a powerful voice in their teen's lives



Parental Guide to hosting responsible teen parties

Every Parent...

...needs to be informed about Alcohol and Youth Brain development research.

Reduced Brain Activity During a Memory Task



(Susan F. Tapert, Ph.D., University of CA, San Diego)

Did You Know?

- The average age reported for the initiation of drinking alcohol is 12 years old and alcohol is the main cause of death for youth under the age of 21.

(NIAAA 2003)

Underage Drinkers are at Higher Risk of Brain Damage than Adults

Adolescents 14- to 21-year-olds who abuse alcohol have a smaller hippocampus--the area of the brain that handles memory and learning, than non-drinkers. This reduction is significant and possibly irreversible according to the American Medical Association. Our brains go through important transformations during adolescence and studies show alcohol use during adolescent years associated with damage to memory and learning capabilities as well as to the decision-making and reasoning areas in the brain. Alcohol takes a greater toll on brain development of those under twenty-one than on any other age group. Adults would have to consume twice as many drinks to suffer the same damage as adolescents and even occasional heavy drinking injures young brains. Adolescent drinkers score worse than non-users on vocabulary, visual-spatial and memory tests and were more likely to perform poorly in school, fall behind and experience social problems, depression, suicidal thoughts and violence.

(AMA, 2002)

Straight Talk

Each year, approximately 5,000 young people under the age of 21 die as a result of underage drinking.

(NIAAA, 2007)

What Every Parent Needs to Know...

...before hosting a party for their teen in Virginia

KNOW THE LAW!

Parents have the right to provide alcohol to their own children in their own home. However, it is illegal to purchase, aid and abet or give alcohol to other minors. Violators can be charged with a **Class 1 Misdemeanor, which carries a fine of \$2,500 and/or up to one year in jail.**

Virginia law recognizes parents' liability for negligence if alcohol is provided to a minor who causes injury to another or him/herself. You have civil liability (meaning you can be sued to pay damages) if a partygoer is hurt or a third-party is injured.

Parents may be held responsible if a teen, as a result of alcohol use in their home:

- Gets into a fight and hurts someone or themselves.
- Falls and hurts him/herself or someone else.
- Sexually assaults someone.
- Damages property.
- Dies from drinking too much.
- Injures or kills someone while driving after leaving the party.

Did You Know?

- On an average day in 2006, of adolescents ages 12–17, nearly 8,000 drank alcohol for the first time.

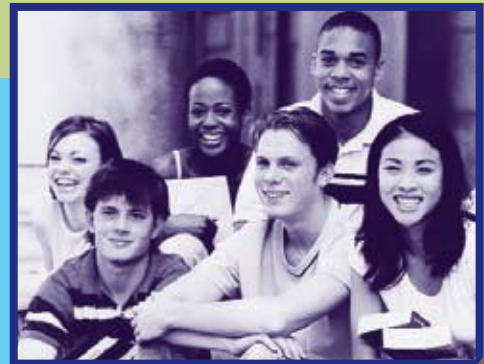
(SAMHSA, 2007)

+ Hosting

When you throw a party for your teen:

Make it a great party by planning for everything...

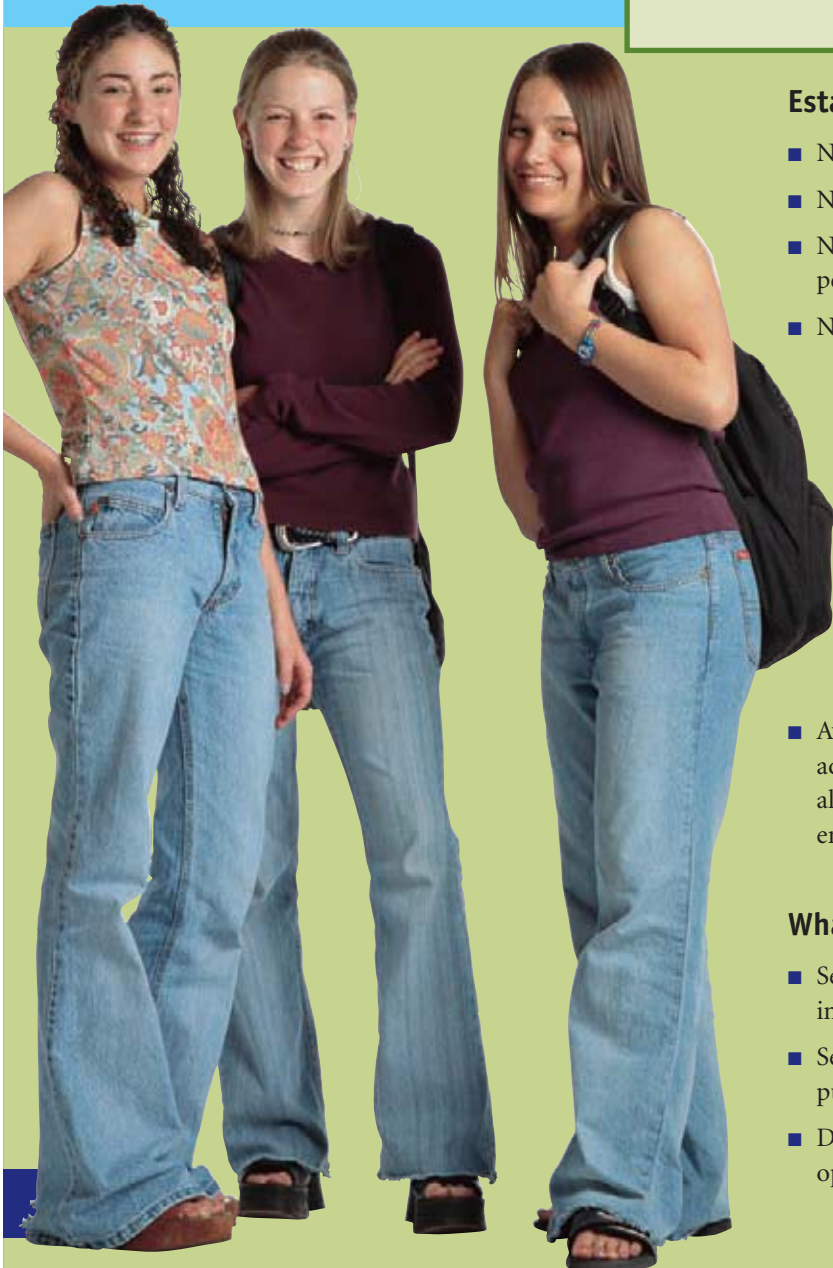
- Decide on a guest list. Give your teen a maximum number to invite. Set an age limit for guests. Keep a copy of the guest list for your records.
- Send invitations! Have your teen inform his/her guest that the party is by invitation only. Don't send e-mail invitations. Avoid the "open party" situation.
- Set a party time, inclusive of a start and end time.
- Put your phone number on the invitation and welcome calls from parents.
- Inform parents/guardians about the party and explain your expectations of partygoers. No Alcohol!
- Have parents or responsible adults drop-off and pickup teens. If teens drive to the party, plan to hold all keys to eliminate the temptation of leaving and returning to the party.
- Stay at the party. Your presence is important. Walk through the party area frequently. Have additional adult supervision onsite during the party.
- Ask all uninvited guests to leave immediately. If necessary, call the police to escort unwanted guests out.
- If you suspect a teen guest is intoxicated, contact his or her parents/guardians immediately.
- Have guests remain in the party location; do not allow teens to go back and forth to a parking lot or their car.
- Hold the party in an area you can monitor party guests from inside and outside.
- Watch for strange behavior. Pay attention if a guest frequents the bathroom after getting a drink. This could indicate the use of illegal substances or alcohol.



Did You Know?

- Youth who begin drinking before the age of 15 are four times more likely to develop alcohol dependence than those who wait until age 21.

(Source: Community Anti-Drug Coalitions of America)



Establish rules ahead of time

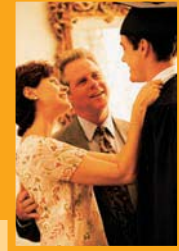
- No drugs or alcohol.
- No smoking.
- No leaving the party & returning without adult permission and supervision.
- No uninvited guests.
 - Party area should have ample lighting for the time of the day; keep lights on throughout the party.
 - Parent(s) will be providing supervision by serving refreshments, etc.
 - Make some rooms in your home off limits to guests; insist on partygoers staying in designated party areas.
 - Secure all forms of alcohol, firearms and other hazardous items in your home in a safe place.
- Avoid combining adult and youth parties. Remember adults are role models, teens will get the message that alcohol is not the “life of a party” when no alcohol is present at the party.

What’s on the menu?

- Serve a wide variety of foods that appeal to teens, including healthy options.
- Serve a variety of drinks in cans or bottles. Avoid serving punch or soft drinks in cups.
- Do not allow teens to bring outside drinks, cups or open bottles into the party.

K Know the Facts

...before you send your teen out to party



If you are a parent of a high school student, soon your teen will be experiencing three of the most anticipated events in his or her life: spring break, prom and graduation. Most teens will celebrate by attending a party with their friends. Before you send your teen out to celebrate, be prepared for what they may encounter before they return to the safety and comfort of your home.

Things to know when your teen is a guest at a party

- Before giving consent for your teen to attend, call the adult host to confirm party location, time and whether alcohol is being served. Obtain a land line number for the party location.
- If you do not know the host parent or on-site designated adult, take the time to introduce yourself. Get to know the parents of your teen's friends. Make sure they share your expectations of drug and alcohol-free parties. Consider entering into a parents pledge to provide safe homes. See informedfamilies.org.
- Make sure your teen knows that you will be checking with the parents of any other teen who is hosting a party. Don't trust that other parents will have the same "no-use" expectations as you.
- Confirm that no alcohol will be served and adult supervision will be on-site. Make sure that the parent is trustworthy; mention that you may be stopping by to check on how the party is going. It is unfortunate, but **NOT ALL PARENTS/GUARDIANS CAN BE TRUSTED** with your teen's safety and well-being.
- Discuss drop-off and pickup expectations with your teen. Make sure your teen has money or a cell phone for an emergency phone call. Be sure your teen knows who to call.
- Make it easy for your teen to leave a party if there are drugs/alcohol. Practice refusal techniques with them. Make arrangements for them to call you or another trusted adult if they need to be picked up. Emphasize they should never ride home with **any** driver who has been drinking.
- Discuss with your teen the dangers of drinking and driving or riding in a car with an impaired person. Even though alcohol is not supposed to be served at the party, there is no guarantee that a party guest will not try to sneak alcohol in.
- Stay up and greet your teen when they return home. This lets your teen know you care and are paying attention to what they are doing.
- Be clear about consequences (in advance) if your teen chooses to drink alcohol.

Straight Talk

Among underage drinkers in 2007, who did not pay for the alcohol the last time they drank, parents, guardians, or other adult family members provided the alcohol 19.5% of the time.

(SAMHSA 2008)

Did You Know?

- Only 31% of parents of 15 to 16 year olds believe their child had a drink in the past year, compared to the 60% of teens in that age group who reported drinking.

(American Viewpoint Results of a National Survey of Parents 2003 camy.org)

Straight Talk

Be specific when setting house rules. Make sure your teen knows your non-alcohol policy and that it is in effect at all times, even in your absence.

Youth between the ages of 12–20 exposure to alcohol advertising on television has risen by 38% from 2001 to 2007.

(Center for Alcohol Marketing and Youth camy.org)

Spring Break! Beach Parties!

Things to remember before you send your teen to the beach or on a spring break vacation

- Do not send your teen to the beach without adult supervision. Send your teen with a group of friends and at least one adult that you have met and trust.
- Write down the hotel name, address, phone number and the contact information for the adult accompanying the teens.
- Prepare a list of emergency numbers such as the police departments, hospitals, and other such emergency contacts for your teen to carry with them. Include phone numbers of family or friends for emergencies. Keep a copy for your home records.
- Have your teen keep a list of phone numbers to call in case your teen's credit cards or traveler's checks are lost or stolen, as well as the traveler's check numbers.
- Include an emergency/safety kit containing things such as aspirin, bandages, disinfectants, cold compress and sun block.
- There's safety in numbers. Talk to your teen about staying with his/her friends. Three or more people watching out for each other are better than one.
- Talk to your teen before the trip about the dangers of drinking and drinking and driving.

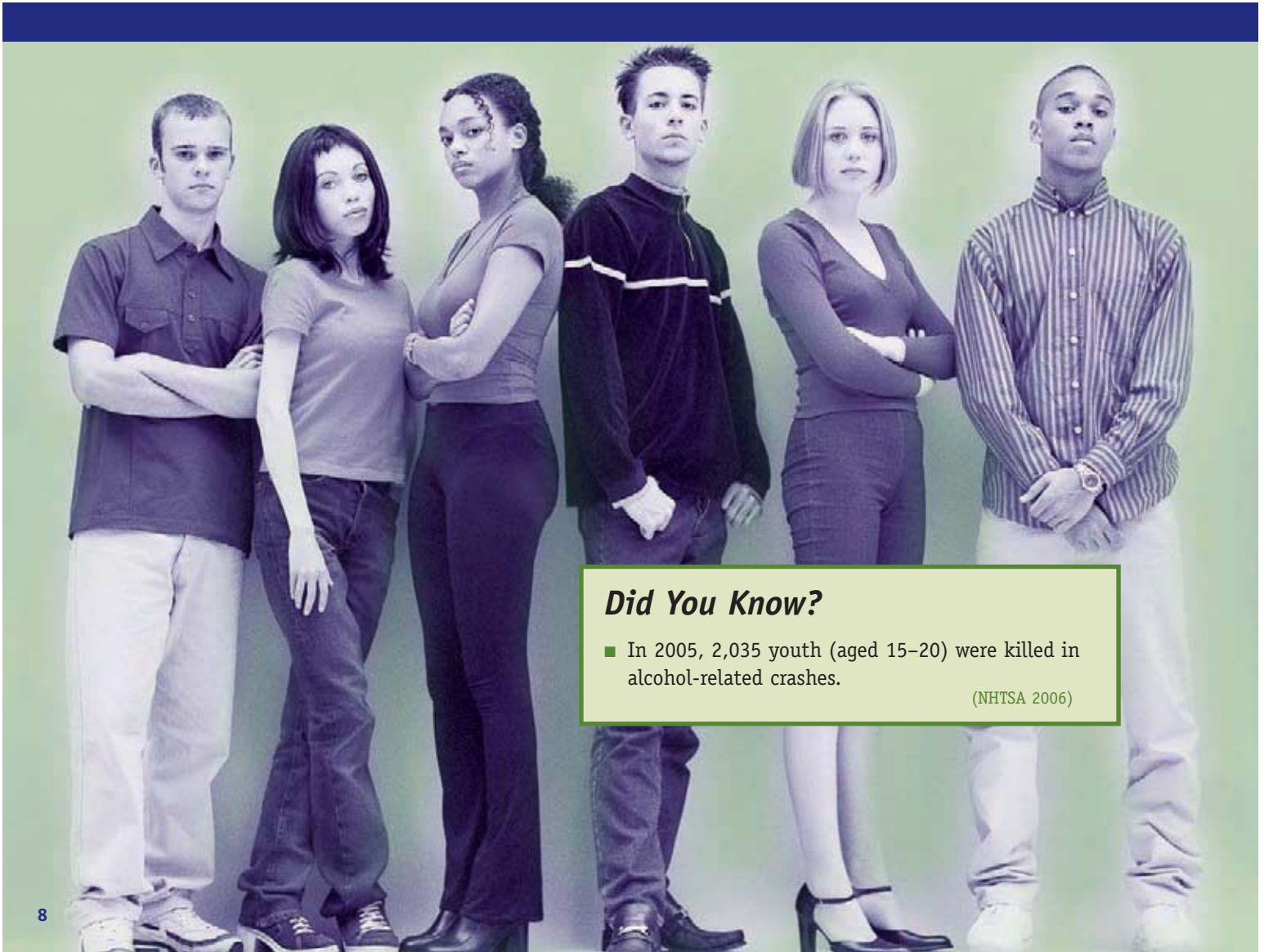
Going out of town

Before you go out of town and leave a teen alone or in charge, consider the following:

- Can your teen handle the responsibility?
- Make it clear that throwing a party is not an option!
- Ask a trusted adult such as a close neighbor to check on your teen and your home while you are gone.
- Be clear about consequences (in advance) if your teen chooses to have a party while you are gone.

P Parent Power

Research shows that parents have a powerful voice in their teen's lives and decisions. Teens who say their parents strongly disapprove of underage drinking and know there will be consequences are less likely to use alcohol.



Did You Know?

- In 2005, 2,035 youth (aged 15–20) were killed in alcohol-related crashes.

(NHTSA 2006)

P Prevention Strategies for Parents

Maintaining open lines of communication, especially listening, is the single most important thing you can do to prevent your teen from using alcohol and other drugs. But it isn't enough!

Stay active and involved

- Know your teen's friends and favorite hangouts.
- Know the parents/guardians of your teen's friends.
- Keep track of and support your teen's participation in school and community activities.
- Do not allow any unchaperoned parties or other gatherings in your home.
- Monitor alcohol use by adults in your home.
- If you keep alcohol in your home, keep track of the supply.

Tips

- Establish healthy beliefs and set clear standards.
- Encourage healthy, creative activities.
- Help your teen develop strong values.
- Create a comfortable and supportive atmosphere at home.
- Value your teens opinions and feelings.
- Be a good role model in your own use of alcohol.

Curfews

- Set a blanket curfew. Time can be added or restricted if teen has something special to do or parent needs them home earlier.
- Allow some flexibility on special occasions such as proms and graduations.
- Do not allow your teens to walk out the door and say, "I'll be back at such and such a time." Teens should tell their parents where they are going and call home if their plans change.
- Do not allow teens to call home 1/2 hour before curfew and ask to sleep over at a friend's. This is generally a red flag saying "something is up."
- Do not give in to what "everyone else is allowed to do."

If your teen holds a learners permit or driver license under age 18 in Virginia the following curfew restrictions apply by law, effective July 1, 2003.

Virginia's curfew laws prohibit drivers under age 18 who hold a learner's permit or driver's license from driving midnight to 4 a.m. If you hold a driver's license, you may drive during these hours:

- In the case of an emergency.
- When traveling to and from work- or a school-sponsored event.
- When accompanied by a parent or other adult acting in place of a parent.
- When responding to an emergency call by volunteer firefighter and rescue squad personnel.

Teen drivers are restricted to the number of passengers under age 18 traveling in vehicle, effective July 1, 2003.

If you are under age 18, you may carry only one passenger under 18 during the first year that you hold your driver's license. After you have held your license for one year, you may carry only three passengers under 18 until you reach age 18. Learner's permit holders may not carry more than one passenger under age 18. Passenger restrictions do not apply to family members. For more information please visit www.dmvnow.com.

Send a Clear Message

It's All About What You Say or Don't Say

You may not want to embarrass or alienate your teen by discussing the issue of underage drinking. But drinking and driving is only one of the many problems associated with illegal underage alcohol use. Other potential problems are unplanned sexual activity, pregnancy, sexually transmitted diseases, alcohol poisoning, and sexual assault. Before sending your teen out to a party, talk to him or her about the consequences of using alcohol while underage. It is far better to be safe than sorry.

- Be prepared to talk about the issue of underage drinking. Take some time to really think about what you want to say and key points to go over with your teen. Anticipate how your teen might respond to your questions. Remember teens do not want a lecture. You do not need to cover everything at once. This should be an ongoing conversation with your teen throughout adolescence.
- Send a clear message that underage alcohol use is not accepted. Enter into a family contract. (SAMHSA's Family Guide to Keeping Youth Mentally Healthy and Drug Free.)
- Keep the lines of communication open.
- Have your teen practice saying "no" to illegal activities. Discuss ways to get out of uncomfortable situations. Help your teen think of ways to respond when they are offered alcohol. For example, "No, I don't want a beer, I have to stay in shape for my team." or, "Nah, I'd rather have a soda" or just say, "no thanks".
- Listen to your teen. When you listen, you create a safe environment where your teen will feel comfortable talking with you about his or her concerns.
- Set firm rules. Make it clear that drinking is illegal under any circumstances until they are over the age of 21. Discuss what the consequences will be if they choose to drink, (i.e., loss of car privileges, phone, dating, computer and misdemeanor charge if caught).
- Be alert for possible signs of alcohol use. Watch for problems like dropping grades, withdrawal, missing money, or a new set of questionable friends.
- Remind your teen of Virginia's "You Use, You Lose" law. If he/she uses, buys or possesses alcohol or drugs, he/she can lose their driver's license or learner's permit for six months to a year and be charged with a Class 1 misdemeanor.

Did You Know?

- There are an estimated 10.8 million underage drinkers in the U.S. (SAMHSA 2006)
- By the time young people graduate from high school at age 18, 75% have had their first drink. (SAMHSA 2007)
- Approximately 10% of 12 year olds say they have used alcohol at least once. (NIAAA 2003)□

Key Points to Mention



- Don't drink alcohol or use other drugs.
- Stay away from teens who do use alcohol or other drugs.
- Resist pressure to use alcohol or other drugs; saying "No" is the norm.
- Leave the party if it is unsafe because drinking or drug use is happening.
- Refuse to ride with friends who have been drinking, even if they act sober.

Did You Know?

- When youth between the ages of 12 and 20 consume alcohol, they drink on average about 5 drinks per occasion about 6 times a month.

(Surgeon General's Call to Action)



This brochure was developed by the Virginia Department of Alcoholic Beverage Control, Education through federal funding provided by the Office of Juvenile Justice and Delinquency Prevention. If you have any questions about this brochure, please contact ABC's Education at (804) 213-4688 or e-mail: education@abc.virginia.gov. Visit us on the Web at www.abc.virginia.gov. © 2009 Virginia ABC. All Rights Reserved.



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Talk to your teens; they will listen

Parental Guide

**to hosting
responsible
teen parties**



www.abc.virginia.gov

Social Host Liability and the Distribution of Alcohol and Narcotics: A Survey and Guide

When someone uses an illegal narcotic and dies as a result, the person who provided the narcotic may face severe criminal penalties. But if the family of the deceased brings a civil action against the narcotics provider, a remedy may not be available. How can a distributor of narcotics be subjected to strict criminal punishment on one hand, and be free from civil liability on the other?

I. INTRODUCTION

Social host liability law is an area of tort law governing the duties owed by social hosts to both their guests and the general public.¹ It originated as a common-law negligence doctrine, but has been heavily codified by almost every state legislature in recent years.² Under the common law, a social host who provided alcohol to a guest was never liable to the guest or a third party for damages resulting from the guest's intoxication.³ With the passage of time and the changing of societal values, customs, and public policy, however, both courts and legislatures across the United States have felt it necessary to expand the scope of social host liability.⁴ Today, many jurisdictions allow recovery against social hosts who distribute alcohol to minors and visibly intoxicated persons.⁵

In recent years, courts in some jurisdictions have been presented with a new and interesting problem concerning social host liability: how to deal with

1. See William J. Bernat, Note, *Party On?: The Excellent Adventures of Social Host Liability in Massachusetts*, 39 SUFFOLK U. L. REV. 981, 984 (2006) (discussing development of social host liability law in United States); Gregory P. Diamantopoulos, Note, *A Look at Social Host and Dram Shop Liability from Pre-Game Tailgating to Post-Game Barhopping*, 4 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 201, 202 (2008) (defining "social host"). A social host is a person or entity other than a licensed vendor of alcohol who distributes alcohol to a guest. See Diamantopoulos, *supra*, at 202.

2. Bernat, *supra* note 1, at 984 (explaining common-law origins of social host liability); see, e.g., GA. CODE ANN. § 51-1-40 (2000) (providing liability against social host for persons injured by intoxicated minor or visibly intoxicated person); IDAHO CODE ANN. § 23-808 (2009) (providing liability against social host for persons injured by intoxicated minor or visibly intoxicated person); LA. REV. STAT. ANN. § 9:2800.1 (2009) (limiting social host liability arising from injuries caused by intoxication of adult guests).

3. Bernat, *supra* note 1, at 984 (describing social host liability at common law).

4. See *McGuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141, 145-46 (Mass. 1986) (noting trend toward imposing liability in response to greater societal concern for drunk driving).

5. See, e.g., ME. REV. STAT. ANN. tit. 28-A, §§ 2501-2507 (2007) (establishing liability for social hosts who distribute alcohol to minors and visibly intoxicated persons); *Nutting v. Zieser*, 482 N.W.2d 424, 424-25 (Iowa 1992) (recognizing liability of social hosts who distribute alcohol to minors); *McGuiggan*, 496 N.E.2d at 146 (recognizing liability for social hosts who distribute alcohol to visibly intoxicated persons).

social hosts who distribute not alcohol, but narcotics, to their guests.⁶ Surprisingly, the vast majority of jurisdictions are silent on this issue.⁷ Whatever the reason for this dearth of case law and statutes, it is an issue that begs to be resolved in order to fully define the rights and responsibilities of social hosts, their guests, and injured third parties.⁸

This Note begins by providing a brief history of social host liability law in the United States.⁹ It then provides a comprehensive survey of the current social host liability laws of each state, analyzing the various approaches and the legal theories supporting them.¹⁰ Next, this Note proposes an approach to social host liability that best benefits society, taking into account both the need to deter irresponsible behavior and to protect innocent parties from harm.¹¹ Finally, this Note argues that a social host who distributes narcotics to a guest violates the duty of reasonable care and should be liable for injuries resulting from the guest's intoxication.¹²

6. See *Gipson v. Kasey*, 150 P.3d 228, 233 (Ariz. 2007) (holding distributor of narcotics owed duty to decedent based upon negligence per se doctrine); *Cook v. Kendrick*, 931 So. 2d 420, 427 (La. Ct. App. 2006) (holding social host liable for distributing narcotics under traditional duty-risk analysis); see also *Commonwealth v. Catalina*, 556 N.E.2d 973, 979-80 (Mass. 1990) (holding distribution of heroin wanton and reckless conduct); *Bash v. Book*, No. WOCV2006-00745-A, slip op. at 5 (Mass. Super. Ct. Oct. 20, 2009) (noting social hosts owe duty of reasonable care to guests). In *Bash*, the court was faced with the question of whether to allow the estate of a deceased university student, who had died as a result of a heroin overdose, to bring a negligence claim against the decedent's boyfriend who had supplied her with the heroin. *Bash*, No. WOCV2006-00745-A, slip op. at 2. The defendant, on a motion for summary judgment, argued that Massachusetts social host liability law bars a person who voluntarily becomes intoxicated from recovering damages from the person who supplied the intoxicant. *Id.* slip op. at 3-4. The court denied the defendant's motion, noting that the previous case law regarding social host liability involved the distribution of alcohol rather than narcotics. *Id.* The court asserted that social hosts, like the rest of the general public, are held to a standard of reasonable care. See *id.* slip op. at 4. The court reasoned that the rationale behind the cases barring a person who is injured as a result of his own voluntary consumption of alcohol from recovering from the person who supplied him is because providing an adult with alcohol is not unreasonable conduct, and, therefore, does not violate the duty of reasonable care. See *id.* slip op. at 3-4. The court then went on to distinguish heroin from alcohol, finding that the "consumption of heroin is inherently dangerous to human life and carries a high probability that death will result." *Id.* slip op. at 4-5; see also 21 U.S.C. § 812 (2006) (placing heroin in most dangerous class of narcotics); UNIFORM CONTROLLED SUBSTANCES ACT (1994) §§ 204-212 (placing heroin in Schedule I). The court held that in light of the dangers of heroin and the strong public policy against heroin use, the distribution of heroin creates an unreasonable risk of harm to the recipient and is a violation of the duty of reasonable care. *Bash*, No. WOCV2006-00745-A, slip op. at 5.

7. See Michael E. Bronfin, Comment, "*Gram Shop*" Liability: Holding Drug Dealers Civilly Liable for Injuries to Third Parties and Underage Purchasers, 1994 U. CHI. LEGAL F. 345, 345 (1994) (noting "common law, federal statutes, and almost all state laws do not impose civil liability upon drug dealers").

8. See *id.* at 346 (noting failure of law to provide adequate means of recovery to victims of drug dealers).

9. See *infra* Part II (discussing origin of social host liability law in U.S.); Part II.A (discussing common-law view of consumption rather than distribution as sole proximate cause of injury); Part II.B (discussing legislative and judicial changes to common law).

10. See *infra* Part II.C (providing survey of various approaches to social host liability law).

11. See *infra* Part III.B (recommending traditional negligence approach).

12. See *infra* Part III.B.3 (proposing cause of action in favor of consumers of narcotics).

II. HISTORY

“Social host liability” is a phrase that describes the civil liability of a person who provides an intoxicant to another without remuneration.¹³ When a plaintiff seeks to sue a social host for injuries sustained as a result of his or someone else’s intoxication, the cause of action is the tort of negligence.¹⁴ The plaintiff has the burden of proving the elements of an ordinary negligence claim: a recognized legal duty, a breach of that duty, causation in fact, proximate causation, and actual harm.¹⁵ When analyzing a negligence claim brought against a social host, courts must determine whether the social host owed his intoxicated guest a duty, and whether the provision of the intoxicant is the proximate cause of the injury.¹⁶

A. Social Host Liability Under the Common Law

At common law, a licensed vendor of alcoholic beverages could not be held liable for selling alcoholic beverages to a person who, after voluntarily becoming intoxicated, injured himself or a third party.¹⁷ Similarly, a social host who served intoxicating liquors to a guest could not be found liable for injuries resulting from the guest’s voluntary intoxication.¹⁸ The rationale for shielding both licensed vendors and social hosts from civil liability lay in the legal fiction of proximate causation.¹⁹ It was believed that the voluntary consumption of an intoxicant, rather than its dissemination, served as the sole proximate cause of any resulting injuries.²⁰

13. *Looby v. Local 13 Prods.*, 751 A.2d 220, 222 (Pa. Super. Ct. 2000) (defining phrase “social host liability”).

14. *See* Bernat, *supra* note 1, at 984 (explaining common-law origins of social host liability); *see also* DAN B. DOBBS ET AL., *TORTS AND COMPENSATION: PERSONAL ACCOUNTABILITY AND SOCIAL RESPONSIBILITY FOR INJURY* 186 (6th ed. 2009) (formulating scope of risk principle with respect to proximate causation).

15. *See* *Coughlin v. Titus & Bean Graphics, Inc.*, 767 N.E.2d 106, 110-11 (Mass. App. Ct. 2002) (reciting elements of negligence cause of action).

16. *See* *Shea v. Matassa*, 918 A.2d 1090, 1097 (Del. 2007) (recognizing consumption of alcohol as sole proximate cause of injury); *Hamilton v. Ganas*, 632 N.E.2d 407, 407 (Mass. 1994) (holding social host has no duty to underage guest who voluntary consumes alcohol).

17. *See, e.g.,* *Wright v. Moffitt*, 437 A.2d 554, 554-55 (Del. 1981) (refraining from creating common-law rule allowing suit against tavern owner for injury to patron or third person); *Holmes v. Circo*, 244 N.W.2d 65, 68 (Neb. 1976) (noting lack of redress under common law against persons selling, giving, or furnishing intoxicating liquor); *McClelland v. Harvie Kothe-Ed Rieman, Post No. 1201, Veterans of Foreign Wars of U.S., Inc.*, 770 P.2d 569, 571-72 (Okla. 1989) (explaining common-law rule exempting tavern owners from civil liability).

18. *See* *Battles v. Cough*, 947 P.2d 600, 602 (Okla. Civ. App. 1997) (holding common-law rule exempting alcoholic beverage vendors from civil liability applies to social hosts).

19. *See infra* note 20 and accompanying text (explaining common-law rationale for exempting licensed vendors and social hosts from civil liability).

20. *See, e.g.,* *Bennett v. Godfather’s Pizza, Inc.*, 570 So. 2d 1351, 1353 (Fla. Dist. Ct. App. 1990) (restating common-law rule that voluntary drinking of alcohol is proximate cause of injury); *Wright v. Sue & Charles, Inc.*, 749 A.2d 241, 243 (Md. Ct. Spec. App. 2000) (noting selling alcohol too remote to be proximate cause of injury under common law); *Williamson v. Old Brogue, Inc.*, 350 S.E.2d 621, 623 (Va. 1986) (noting

B. Legislative and Judicial Abrogation of the Common-Law Rule

With the advent of new transportation technologies in the twentieth century—namely the invention and widespread use of the automobile—society’s views regarding the liabilities of licensed vendors of alcoholic beverages and social hosts began to change.²¹ In contrast to the horse-and-buggy days during which the common law developed, the age of the automobile presented new and startling dangers to travelers on the roads and highways of the United States.²² As society began to appreciate the dangerous and often deadly results of drunk driving, both state legislatures and courts began to rethink the public policy behind exempting licensed vendors and social hosts from liability.²³

1. Legislative Enactments in the Realm of Social Host Liability Law

In order to provide the public with a right of recovery for injuries suffered as a result of the negligent provision of alcohol, many state legislatures adopted what are known as dram shop statutes.²⁴ Dram shop statutes, although varying in scope from state to state, abrogated the common-law rule of nonliability in particular circumstances.²⁵ Initially, state legislatures were more inclined to

common law considers consumption, not furnishing, of intoxicant as proximate cause of injury).

21. See *infra* note 23 and accompanying text (providing examples of how hazards of drunk driving motivated changes in liquor liability law).

22. See *Craig v. Driscoll*, 813 A.2d 1003, 1019-20 (Conn. 2003) (quoting *Slicer v. Quigley*, 429 A.2d 855, 864 (Conn. 1980) (Bogdanski, J., dissenting) (viewing change in transportation technology reason enough to amend common-law rule)), *overruled on other grounds by Ely v. Murphy*, 540 A.2d 54 (Conn. 1988).

23. See, e.g., *McGuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141, 145-46 (Mass. 1986) (recognizing trend toward imposing liability as response to society’s greater concern for drunk driving); *Nehring v. LaCounte*, 712 P.2d 1329, 1334 (Mont. 1986) (observing greater unreasonable risk of harm resulting from frequency of drunk driving accidents), *superseded by statute*, Dram Shop Act, 1986 Mont. Spec. Sess. Laws, ch. 1, § 1 (codified as amended at MONT. CODE ANN. § 27-1-710 (2009)), *as recognized in Rohlfs v. Klemenhagen, LLC*, 227 P.3d 42 (Mont. 2009); *Kelly v. Gwinnell*, 476 A.2d 1219, 1224 (N.J. 1984) (noting society’s “extreme concern about drunk driving”), *superseded by statute*, 1987 N.J. Laws 1804. In *Kelly*, the court held that a social host who serves liquor to an adult guest, knowing that the guest is intoxicated and subsequently intends to operate a motor vehicle, is liable to third parties injured as a result of the guest’s intoxication. *Kelly*, 476 A.2d at 1224. The court reasoned that in light of society’s concerns about the dangers of drunk driving, the assurance of just compensation to drunk driving victims coupled with the effect of deterring drunk driving justified the creation of a new common-law cause of action. *Id.* Similarly, in *McGuiggan*, the court recognized a social host’s liability to a person injured by an intoxicated guest’s negligent operation of a motor vehicle where the social host knew or should have known the guest was intoxicated and yet, still provided him with an alcoholic beverage. *McGuiggan*, 496 N.E.2d at 146. The court justified its holding upon society’s increasing concern about the dangers of drunk driving to the public. *Id.* In *Nehring*, the court held that violation of a state liquor control statute constituted evidence of negligence. *Nehring*, 712 P.2d at 1334. The court reasoned that the current dangers to society associated with drunk driving rendered the common-law rule shielding vendors from liability unjust. *Id.*

24. See *Bernat*, *supra* note 1, at 984 (attributing adoption of dram shop statutes to rise in drunk driving related fatalities); *Diamantopoulos*, *supra* note 1, at 205 (noting common-law rule abrogated in many states by statutes imposing liability under specific circumstances).

25. See, e.g., ALASKA STAT. § 04.21.020(a) (2010) (holding vendors liable for injuries resulting from sale of alcohol to minor or intoxicated person); ARK. CODE ANN. § 16-126-105 (Supp. 2009) (creating cause of

hold licensed vendors of alcoholic beverages liable for injuries resulting from the negligent sale of alcohol than to hold social hosts liable.²⁶ The rationale behind this disparate treatment was that social hosts are not in as good a position to protect the public from intoxicated persons as are licensed vendors.²⁷ As our society has grown more conscious of the hazards associated with drunk driving, however, some state legislatures have extended liability to social hosts as well.²⁸

2. Judicial Modification of the Common-Law Rule

Courts have often been reluctant to make substantive changes to the common-law rule where the state legislature has already defined the liabilities of commercial vendors and social hosts.²⁹ Some of these courts have reasoned

action for knowingly selling alcohol to minor or clearly intoxicated person); CAL. BUS. & PROF. CODE § 25602.1 (West 1997) (creating cause of action against licensed vendor for sale of alcohol to visibly intoxicated minor).

26. See Bernat, *supra* note 1, at 984 (noting historical reluctance to impose liability on social hosts).

27. See Manning v. Nobile, 582 N.E.2d 942, 948 (Mass. 1991) (explaining rationale for not imposing identical duties upon licensed vendors and social hosts); Hilary Ray Weinert, Comment, *Social Hosts and Drunken Drivers: A Duty to Intervene?*, 133 U. PA. L. REV. 867, 872 (1985) (recognizing lesser blameworthiness of host as reason to deny injured imbiber right to recover from host). In *Manning*, the court refused to recognize a cause of action against a social host for injuries sustained by an intoxicated guest. *Manning*, 582 N.E.2d at 948. The court recognized that under Massachusetts law, a licensed vendor may be found liable for the injuries of an intoxicated patron where the licensee engaged in willful, wanton, or reckless conduct. *Id.* Nevertheless, the court reasoned that due to the “important ‘differences between the operation of a commercial establishment selling alcoholic beverages for consumption on the premises and the furnishing of alcoholic beverages to guests in one’s home,’” social hosts should not be held to the same standard of care as licensed vendors. *Id.* (quoting *McGuiggan*, 496 N.E.2d at 143-44). First, the court reasoned that the threat of liability might “offset a commercial vendor’s ‘financial incentive to encourage drinking.’” *Id.* (quoting *McGuiggan*, 496 N.E.2d at 144). Second, the court reasoned that licensed vendors naturally have more control over and the better ability to monitor drinking than social hosts at their private homes. *Id.* Third, licensed vendors are generally more experienced at identifying and managing intoxicated patrons than are social hosts. *Id.* Fourth, the court reasoned that licensed vendors are in a better position to insure themselves against such liability than are social hosts. *Id.*; see also Bernat, *supra* note 1, at 984 (explaining legislative reluctance to impose identical duties upon licensed vendors and social hosts).

28. See, e.g., ALASKA STAT. § 04.21.020(d) (2010) (holding social hosts liable for furnishing alcohol to persons under legal drinking age); COLO. REV. STAT. § 12-47-801(4)(a)(I) (2010) (holding social host liable where host knowingly served person under legal drinking age); IDAHO CODE ANN. § 23-808(3) (2009) (holding social hosts and licensed vendors equally liable for negligent distribution of alcohol).

29. See, e.g., *Bankston v. Brennan*, 507 So. 2d 1385, 1387 (Fla. 1987) (holding deference to legislative branch proper when legislature has entered particular field); *Settlemyer v. Wilmington Veterans Post No. 49, Am. Legion, Inc.*, 464 N.E.2d 521, 524 (Ohio 1984) (deferring policy modifications to social host liability to discretion of legislature), *superseded by statute*, 1986 Ohio Laws, Part III, 5711, *as recognized in* *Lesnau v. Andate Enters., Inc.*, 756 N.E.2d 97 (Ohio 2001); *Burkhart v. Harrod*, 755 P.2d 759, 761 (Wash. 1988) (en banc) (deferring to legislature to expand scope of social host liability). In *Bankston*, the court refused to hold a social host liable for providing alcohol to a minor who subsequently drove and injured a third party. *Bankston*, 507 So. 2d at 1387. The court held that a statute that limited tort liability for a person selling or furnishing alcoholic beverages to minors to those who willfully and unlawfully sold such beverages applied only to licensed vendors and not to social hosts. *Id.* The court also refused to amend the common law and thereby impose liability upon the social host. *Id.* The court reasoned that, although it had the inherent power to make such a change to the common law, to do so would be improper in light of the legislature’s active role in

that where a state legislature has spoken on an issue, it is the legislature's sole prerogative to make any further alterations to the law.³⁰ Other courts have gone even further, declaring that they no longer have the authority to amend the common law.³¹ In *Wright v. Sue & Charles, Inc.*,³² Justice Moylan eloquently remarked:

Time was, of course, when common law courts actually made or changed substantive law, but that practice is no longer a valid precedent. . . . The rationale for such authority in the common law courts was that the primary source of law was not the people, speaking through a legislative branch, but the King. The courts were simply an arm of the King, as the very extension of the word "court" . . . demonstrates. That law-making prerogative was forever curtailed when American constitution makers, state and federal, designed a radically different governmental scheme incorporating Montesquieu's concept of three coordinate branches of government and the careful allocation of separate powers among those separate branches. If the judicial branch today occasionally strays beyond its assigned turf, it is either an inadvertent lapse or a stealthy usurpation of a power that properly belongs somewhere else.³³

It should be noted, however, that not all courts are in accord with Justice Moylan's views about the role of the judiciary in writing the common law.³⁴ Many courts have chosen to modify the common-law rule governing the liabilities of social hosts.³⁵ These courts maintain that when the public policies supporting a particular common-law rule become outdated, it is the duty of the judiciary to rewrite the law to more accurately reflect the values and concerns of society.³⁶ Courts that have extended liability to social hosts have done so

defining the liabilities associated with the distribution of alcoholic beverages. *Id.* The court stated that "when the legislature has actively entered a particular field and has clearly indicated its ability to deal with such a policy question, the more prudent course is . . . to defer to the legislative branch." *Id.* The court further reasoned that the legislative branch is better capable of deciding such broad questions of public policy. *Id.*

30. See *supra* note 29 and accompanying text (explaining refusal of some courts to amend common-law rule regarding social host liability).

31. See *Wright v. Sue & Charles, Inc.*, 749 A.2d 241, 242 (Md. Ct. Spec. App. 2000) (holding practice of common-law courts amending law no longer valid precedent).

32. 749 A.2d 241 (Md. Ct. Spec. App. 2000).

33. *Id.* at 242.

34. See *infra* note 35 (providing examples of courts that have modified common-law rule relating to social host liability).

35. See, e.g., *McGuiggan v. New England Tel. & Tel. Co.*, 496 N.E.2d 141, 146 (Mass. 1986) (observing social hosts liable to third parties injured by negligently served intoxicated guest); *Camalier v. Jeffries*, 460 S.E.2d 133, 138 (N.C. 1995) (citing *Hart v. Ivey*, 420 S.E.2d 174, 178 (N.C. 1992)) (holding social host liable when host should have known guest intoxicated and intended to drive); *Martin v. Marciano*, 871 A.2d 911, 920 (R.I. 2005) (creating cause of action against social hosts for injuries caused to and by intoxicated minors).

36. See *Ely v. Murphy*, 540 A.2d 54, 57 (Conn. 1988) (quoting *Herald Publ'g Co. v. Bill*, 111 A.2d 4, 8 (Conn. 1955)) (noting rules once believed sound sometimes require modification to serve interests of justice); *Kelly v. Gwinnell*, 476 A.2d 1219, 1226 (N.J. 1984) (noting traditional function of judiciary includes determining scope of duty in negligence cases), *superseded by statute*, 1987 N.J. Laws 1804; *Marcum v.*

based upon either traditional negligence principles or upon the theory of negligence per se.³⁷ Several state courts have altered the common-law rules of social host liability despite the existence of concurrent dram shop legislation.³⁸ In some instances, state legislatures have elected to prevent judicial interference in the realm of social host liability law by adopting so-called anti-dram shop statutes, which specifically immunize social hosts from any liability arising out of the intoxication of a guest.³⁹

C. Fifty State Survey of Social-Host Liability Law

1. Alabama

Alabama has never recognized a common-law cause of action against a social host for the negligent provision of alcohol to a guest.⁴⁰ Alabama courts have adhered to the common-law rationale that it is the consumption of the alcohol, rather than its provision, which is the proximate cause of any resulting injuries.⁴¹ In 1909, the Alabama legislature adopted a dram shop statute that created a civil cause of action against a purveyor of alcoholic beverages in favor of a third party injured or killed by an intoxicated person when the purveyor dispensed beverages causing the intoxication “contrary to the

Bowden, 643 S.E.2d 85, 88 (S.C. 2007) (holding judiciary has power to change common law when outdated rules offend public policy).

37. See, e.g., *Ely*, 540 A.2d at 57-58 (amending common law to allow claim against social host for furnishing alcohol to minor); *Mitseff v. Wheeler*, 526 N.E.2d 798, 800 (Ohio 1988) (finding statutory duty to refrain from furnishing alcohol to person under legal drinking age); *Douglas v. Schwenk*, 479 A.2d 608, 611 (Pa. Super. Ct. 1984) (holding social hosts negligent per se for serving alcohol to person under legal drinking age); see also RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 14 (2005) [hereinafter RESTATEMENT (THIRD) OF TORTS] (defining doctrine of negligence per se). “AN ACTOR IS NEGLIGENT IF, WITHOUT EXCUSE, THE ACTOR VIOLATES A STATUTE THAT IS DESIGNED TO PROTECT AGAINST THE TYPE OF ACCIDENT THE ACTOR’S CONDUCT CAUSES, AND IF THE ACCIDENT VICTIM IS WITHIN THE CLASS OF PERSONS THE STATUTE IS DESIGNED TO PROTECT.” RESTATEMENT (THIRD) OF TORTS, *supra*, § 14; see also Diamantopoulos, *supra* note 1, at 205 (noting most courts imposing liability on social hosts have applied principles of common-law negligence).

38. See *Craig v. Driscoll*, 813 A.2d 1003, 1015 (Conn. 2003) (holding dram shop statute does not preclude common-law cause of action in negligence against licensed vendor); *Bauer v. Dann*, 428 N.W.2d 658, 661 (Iowa 1988) (holding common-law claim against social hosts not preempted by state dram shop statute).

39. See, e.g., CAL. CIV. CODE § 1714(c) (West 2009) (providing social host who furnishes alcoholic beverages to another is not liable for damages); LA. REV. STAT. ANN. § 9:2800.1 (2009) (limiting social host liability arising from injuries caused by intoxication of adult guests); TENN. CODE ANN. § 57-10-101 (2002) (declaring consumption, not furnishing, of alcoholic beverages is proximate cause of injuries inflicted upon another).

40. See *Buchanan v. Merger Enters., Inc.*, 463 So. 2d 121, 125 (Ala. 1984) (reiterating common-law rule of no liability for negligently dispensing alcohol), *superseded by statute*, Dram Shop Act, ALA. CODE § 6-5-71 (LexisNexis 2005), *as recognized in* *Jackson v. Azalea City Racing Club, Inc.*, 553 So. 2d 112, 113 (Ala. 1989).

41. See *King v. Henkie*, 80 Ala. 505, 511, (1886) (holding selling of whiskey not proximate cause of patron’s death), *abrogated by* *Buchanan*, 463 So. 2d 121.

provisions of law.”⁴² Alabama courts have interpreted this statute to apply solely to the commercial sale of alcohol.⁴³ Therefore, a cause of action may not lie against a social host for negligently dispensing alcohol where no sale is involved and where the alcohol was not dispensed contrary to law.⁴⁴

2. Alaska

Alaska’s dram shop statute creates civil liability only for licensed vendors of alcohol when the injuries at issue result from a recipient’s intoxication.⁴⁵ Thus, the statute implicitly absolves social hosts from civil liability for harm resulting from the intoxication of their guests.⁴⁶ In *Chokwak v. Worley*,⁴⁷ the Supreme Court of Alaska upheld Alaska’s dram shop statute as constitutional.⁴⁸ The court applied a rational basis analysis and concluded that “immunizing social hosts from liability caused by their guests’ conduct can rationally be based on a view that it is an undesirable interference with normal hospitality to require a social host to monitor guests’ alcohol consumption” and “the primary actor responsible for harm caused by a drunken person is the drunken person.”⁴⁹

3. Arizona

The Arizona legislature has adopted a statute that immunizes social hosts who furnish alcohol to persons of legal drinking age from liability.⁵⁰ In *Estate of Hernandez v. Arizona Board of Regents*,⁵¹ the Supreme Court of Arizona assessed the liabilities of social hosts who negligently furnish alcohol to persons under the legal drinking age.⁵² The court held that third parties injured by an intoxicated person under the legal drinking age may bring a cause of

42. See 1909 Ala. Acts 63 (providing cause of action against provider of intoxicant in favor of third party victims), amended by ALA. CODE § 6-5-71 (LexisNexis 2005).

43. *Beeson v. Scoles Cadillac Corp.*, 506 So. 2d 999, 1000 (Ala. 1987) (noting social hosts not liable for negligently dispensing alcohol in absence of sale).

44. See *id.* (interpreting 100 years of Alabama jurisprudence).

45. ALASKA STAT. § 04.21.020 (2010) (proscribing liabilities of persons providing alcoholic beverages).

46. See *Christiansen v. Christiansen*, 152 P.3d 1144, 1146 (Alaska 2007) (explaining liabilities of social hosts in light of Alaska dram shop statute).

47. 912 P.2d 1248 (Alaska 1996).

48. *Id.* at 1255.

49. *Id.* (proposing possible legislative rationale for immunizing social hosts from civil liability).

50. See ARIZ. REV. STAT. ANN. § 4-301 (2002). The statute provides:

A person other than a licensee or an employee of a licensee acting during the employee’s working hours or in connection with such employment is not liable in damages to any person who is injured, or to the survivors of any person killed, or for damage to property, which is alleged to have been caused in whole or in part by reason of the furnishing or serving of spirituous liquor to a person of the legal drinking age.

Id.

51. 866 P.2d 1330 (Ariz. 1994).

52. *Id.* at 1333 (presenting issue before court).

action against the social host who negligently furnished the alcohol.⁵³

4. Arkansas

Arkansas has statutorily codified the common-law rule shielding social hosts from all liability.⁵⁴ Section 16-126-105 of the Arkansas Code states:

Except in the knowing sale of alcohol to a minor or to a clearly intoxicated person, the General Assembly hereby finds and declares that the consumption of any alcoholic beverage, rather than the furnishing of any alcoholic beverage, is the proximate cause of injuries or property damage inflicted upon persons or property by a legally intoxicated person.⁵⁵

Because social hosts, by definition, do not sell alcoholic beverages to their guests, they can never be found liable for any injuries caused by an intoxicated guest.⁵⁶

53. *Id.* at 1342 (stating holding of court). The court first noted that by granting immunity in section 4-301 solely to social hosts who furnish alcohol to persons of legal drinking age, the Arizona legislature left the door open for the court to determine the liability of social hosts who furnish alcohol to persons under the legal drinking age. *Id.* at 1338. The court found that social hosts have a duty of care, based upon both statutory and common-law principles, to avoid furnishing alcohol to underage consumers. *Id.* at 1341-42. For identifying the source of the duty, the court looked to an Arizona statute making it a criminal offense to furnish alcohol to a minor. *Id.* at 1339; *see also* ARIZ. REV. STAT. ANN. § 4-244(9) (2002). In finding a duty under the common law, the court looked to the well-established principle that dangerous items should not be furnished to those known to have a diminished capacity when doing so would create an unreasonable risk of harm. *Estate of Hernandez*, 866 P.2d at 1340 (citing RESTATEMENT (SECOND) OF TORTS § 390 (1965)). The court did not expressly hold that an underage person who sustained injury as a result of his own voluntary intoxication could bring a cause of action against the social host who served him. *See id.* at 1342. The court's dicta, however, suggests that Arizona courts would recognize an underage person's right to recovery against a social host. *See id.* at 1339. The court relied upon section 4-244, which makes it a criminal offense to furnish alcohol to a minor, as the basis for imposing a duty of care upon social hosts to refrain from furnishing alcohol to minors. *Id.*; *see also* ARIZ. REV. STAT. ANN. § 4-244(9) (2002). The court noted that a criminal statute may establish a duty under tort law if the plaintiff is within the class of persons the statute is designed to protect and the harm suffered is of the type the statute is designed to prevent. *See Estate of Hernandez*, 866 P.2d at 1339 (citing W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS § 36, at 229-30 (5th ed. 1984)). The court observed that it had previously relied upon the same statute to sustain a cause of action against licensees who furnish alcohol to minors. *Id.* (citing *Brannigan v. Raybuck*, 667 P.2d 213, 217 (Ariz. 1983)). In *Brannigan*, the court stated that section 4-244(9) "constitute[s] legislative recognition of the foreseeable danger to both the patron and third parties, and an effort to meet that danger by enactment of laws designed to regulate the industry, to protect third persons, and to protect those who are underage from themselves." *Brannigan*, 667 P.2d at 217. Because the Supreme Court of Arizona has already determined that underage drinkers fall within the class of persons section 4-244(9) is designed to protect, it necessarily follows that the statute creates a cause of action in favor of an underage person against a social host whose act of furnishing alcohol led to the underage person's voluntary intoxication and subsequent injuries. *See Estate of Hernandez*, 866 P.2d at 1339.

54. *See* ARK. CODE ANN. § 16-126-105 (Supp. 2009) (limiting liability to injuries resulting from sale of alcohol to minor or visibly intoxicated person).

55. *Id.*

56. *See id.*; *see also* *Looby v. Local 13 Prods.*, 751 A.2d 220, 222 (Pa. Super. Ct. 2000) (defining social host as one who provides intoxicant to another without remuneration).

5. California

The California state legislature has chosen to explicitly shield social hosts from any and all liability relating to the provision of alcoholic beverages to social guests.⁵⁷ Section 1714(c) of the California Civil Code provides that “no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages.”⁵⁸

6. Colorado

Colorado courts have never recognized social host liability under the common law.⁵⁹ Notwithstanding this fact, an exception to the common-law rule has been created by statute.⁶⁰ The statute provides that a social host may be civilly liable for furnishing alcohol only if “[i]t is proven that the social host knowingly served any alcohol beverage to such person who was under the age of twenty-one years or knowingly provided the person under the age of twenty-one a place to consume an alcoholic beverage.”⁶¹ This statute affords the exclusive remedy for the negligent provision of alcohol by social hosts.⁶² The statute provides a cause of action only in favor of third parties injured by an intoxicated minor.⁶³

7. Connecticut

Connecticut courts recognize an exception to the general common-law principle exempting social hosts from liability in circumstances when alcohol is furnished to a minor.⁶⁴ The Supreme Court of Connecticut justified creating such an exception to the common-law rule “[i]n view of the legislative determination that minors are incompetent to assimilate responsibly the effects of alcohol and lack the legal capacity to do so.”⁶⁵ Under this exception, a

57. See CAL. CIV. CODE § 1714(c) (West 2009) (exempting social hosts from potential liability for furnishing alcohol to guests).

58. *Id.*

59. See *Rojas v. Engineered Plastic Designs, Inc.*, 68 P.3d 591, 592 (Colo. App. 2003).

60. COLO. REV. STAT. § 12-47-801(4) (2010) (creating liability against social host who knowingly serves alcohol to person under twenty-one).

61. *Id.*

62. *Rojas*, 68 P.3d at 592. Section 12-47-801(4) provides the exclusive remedy against social hosts because, in all other cases, the consumption of alcohol, rather than the sale, service, or provision of alcohol, is the proximate cause of injury caused by the intoxicated person. *Id.* at 592-93.

63. See *Forrest v. Lorrigan*, 833 P.2d 873, 874 (Colo. App. 1992) (stating statute provides liability for injury to third person).

64. See *Pike v. Bugbee*, 974 A.2d 743, 750 (Conn. App. Ct. 2009) (acknowledging Supreme Court of Connecticut’s recognition of common-law principle subject to exception for minors).

65. *Ely v. Murphy*, 540 A.2d 54, 58 (Conn. 1988) (holding minor’s voluntary consumption of alcohol does not insulate provider from liability for ensuing injury); see also *Bohan v. Last*, 674 A.2d 839, 842-43

social host may be found liable to the minor served for the minor's own injuries sustained as a result of his or her own voluntary intoxication.⁶⁶ The social host may likewise be found liable to innocent third parties injured as a result of the social host's service of alcohol to a minor.⁶⁷

8. Delaware

Delaware courts have refused to recognize a cause of action against a social host for the negligent provision of alcohol to a guest.⁶⁸ In *Shea v. Matassa*,⁶⁹ the wife of a motorist who was involved in a fatal car crash with an intoxicated driver brought a wrongful death claim against the social host, who she alleged had negligently served alcohol to the driver knowing that he would drive while intoxicated.⁷⁰ The Supreme Court of Delaware refused to create a new common-law cause of action and affirmed the trial court's grant of summary judgment for the defendant.⁷¹ The court reasoned that due to the controversial public policy issues surrounding social host liability, abrogation of the common-law rule of nonliability should be left to the state legislature, which has yet to address the issue.⁷² The court further reasoned that, because it had declined to recognize a "common law dram shop cause of action, it would be anomalous" to hold social hosts to a higher standard of legal responsibility than trained, licensed, and regulated bartenders.⁷³

(Conn. 1996) (noting minors overall less blameworthy than adults for overconsumption of alcohol).

66. *Pike*, 974 A.2d at 751 (holding scope of exception extends to injuries sustained by both minor served and third parties).

67. *Id.*

68. *See Shea v. Matassa*, 918 A.2d 1090, 1097 (Del. 2007) (refusing to create cause of action against social host).

69. 918 A.2d 1090 (Del. 2007).

70. *Id.* at 1091-92.

71. *Id.* at 1092.

72. *Id.* at 1097 (observing host's inability to control guests might lead to "significant financial burdens" (citation omitted)). *But see DiOssi v. Maroney*, 548 A.2d 1361, 1368 (Del. 1988) (determining voluntary consumption by minor does not insulate provider from liability). In *DiOssi*, the plaintiff was injured by an intoxicated minor guest while providing valet services at the defendant's home. *Id.* at 1362-63. The Delaware Supreme Court overruled the trial court's grant of summary judgment for the defendant and held that a social host is liable to a third party business invitee when the host can reasonably anticipate that some of his minor guests will drink alcoholic beverages and subsequently attempt to drive a vehicle. *Id.* at 1368. The *Shea* court distinguished the holding in *DiOssi* by noting that the finding of liability in *DiOssi* revolved around the existence of a special relationship between the social host and injured third party created by "the exposure of a business invitee to a dangerous activity which the property owner permitted to exist on his land." *Shea*, 918 A.2d at 1096 (quoting *DiOssi*, 548 A.2d at 1365).

73. *Shea*, 918 A.2d at 1097; *see also Oakes v. Megaw*, 565 A.2d 914, 917 (Del. 1989) (refusing to recognize claim against vendor by third person injured by intoxicated minor patron); *Samson v. Smith*, 560 A.2d 1024, 1028 (Del. 1989) (refusing to recognize claim against vendor by third person injured by intoxicated adult patron); *Wright v. Moffit*, 437 A.2d 554, 556-57 (Del. 1981) (refusing to recognize claim against vendor for patron's injuries resulting from patron's own voluntary intoxication).

9. Florida

Florida courts generally do not recognize a cause of action against a social host under common-law negligence principles.⁷⁴ Florida does have a dram shop statute that creates a cause of action against a person who “willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages.”⁷⁵ This statute, however, has been held to be inapplicable to social hosts.⁷⁶

Florida courts have recognized a limited exception to the common-law rule under the doctrine of negligence per se.⁷⁷ In *Trainor v. Estate of Hansen*,⁷⁸ Megan Trainor was killed in a car accident involving an intoxicated minor driver.⁷⁹ The minor driver had become intoxicated at a house party hosted by the defendants in the case.⁸⁰ The court recognized a cause of action for social host liability under the doctrine of negligence per se based on an alleged violation of a Florida statute making it a crime for an adult to host an open house party and knowingly allow minor guests to possess or consume alcoholic beverages or drugs.⁸¹ The court reasoned that minors and innocent third

74. See *United Servs. Auto. Ass'n v. Butler*, 359 So. 2d 498, 499 (Fla. Dist. Ct. App. 1978) (noting at common law, injured party had no cause of action against dispenser of alcohol).

75. FLA. STAT. ANN. § 768.125 (West 2005).

76. *Bankston v. Brennan*, 507 So. 2d 1385, 1385 (Fla. 1987) (holding section 768.125 does not create cause of action against social host). The court reasoned that the purpose of section 768.125 was to limit vendor liability, which had been broadened by previous judicial decisions. *Id.* at 1386-87. In light of the legislative intent, the court concluded that it would be “anomalous and illogical to assume that a statute enacted to limit preexisting vendor liability would simultaneously create an entirely new and distinct cause of action against a social host, a cause of action previously unrecognized by the common law.” *Id.* at 1387. After holding that section 768.125 did not create a cause of action against a social host in favor of a person injured by an intoxicated minor who was served alcohol by the host, the court then considered whether or not to recognize such a cause of action under the common law. *Id.* The court declined to recognize such a cause of action, reasoning that, “when the legislature has actively entered a particular field and has clearly indicated its ability to deal with such a policy question, the more prudent course is for this Court to defer to the legislative branch.” *Id.*

77. See *Trainor v. Estate of Hansen*, 740 So. 2d 1201, 1202 (Fla. Dist. Ct. App. 1999) (recognizing social host liability under doctrine of negligence per se). *But see Butler*, 359 So. 2d at 500 (holding violation of statute prohibiting sale or gift of alcohol to minor not negligence per se). In *Butler*, the court determined that the criminal statute was applicable to licensed vendors and not to social hosts. *Id.*

78. 740 So. 2d 1201 (Fla. Dist. Ct. App. 1999)

79. *Id.* at 1202 (recounting facts of case).

80. *Id.*

81. *Id.*; see also FLA. STAT. ANN. § 856.015 (West Supp. 2011). The statute provides,

A person having control of any residence may not allow an open house party to take place at the residence if any alcoholic beverage or drug is possessed or consumed at the residence by any minor where the person knows that an alcoholic beverage or drug is in the possession of or being consumed by a minor at said residence and where the person fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage or drug.

FLA. STAT. ANN. § 856.015(2) (West Supp. 2011).

persons are within the class of persons the statute is designed to protect and the injury suffered by the plaintiff is the type of harm the statute seeks to prevent.⁸²

10. Georgia

The Georgia legislature has declared that “the consumption of alcoholic beverages, rather than the sale or furnishing or serving of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.”⁸³ Consequently, a person who sells, furnishes, or serves alcoholic beverages to a person of lawful drinking age cannot be held liable for damages resulting from that person’s intoxication.⁸⁴ The statute provides an exception, however, in the case where the person served is visibly intoxicated or is under the legal drinking age.⁸⁵ Under the statute, a person who willfully, knowingly, and unlawfully sells, furnishes, or serves alcohol to a visibly intoxicated person or a person under the legal drinking age, knowing that such person will soon be driving an automobile, may be held liable for damages suffered by third parties resulting from that person’s intoxication.⁸⁶ The imbiber, however, has no cause of action against the provider for injuries that result from his own voluntary intoxication under the statute.⁸⁷ The statute applies to both licensed vendors and social hosts, and provides the exclusive remedy for injuries sustained as a result of the sale or gift of alcoholic beverages.⁸⁸

11. Hawaii

The Supreme Court of Hawaii has recognized a right of recovery, in the absence of dram shop legislation, in favor of a person injured by an inebriated motorist against the tavern that provided the alcohol to the driver.⁸⁹ In *Ono v. Applegate*,⁹⁰ the court found that tavern owners have a duty based on statute not to serve minors and visibly intoxicated patrons.⁹¹ Hawaiian courts, however,

82. See *Trainor*, 740 So. 2d at 1202.

83. GA. CODE ANN. § 51-1-40(a) (2000).

84. *Id.* § 51-1-40(b).

85. *Id.*

86. *Id.*

87. GA. CODE ANN. § 51-1-40(b) (2000).

88. See *Hulsey v. Northside Equities, Inc.*, 548 S.E.2d 41, 45 (Ga. Ct. App. 2001) (noting section 51-1-40(b) provides exclusive remedy for injuries resulting from provision of alcohol); *Birnbrey, Minsk & Minsk, LLC v. Yirga*, 535 S.E.2d 792, 794 (Ga. Ct. App. 2000) (recognizing applicability of statute to social hosts).

89. See *Ono v. Applegate*, 612 P.2d 533, 538 (Haw. 1980) (listing common-law dram shop elements).

90. 612 P.2d 533 (Haw. 1980).

91. *Id.* at 539 (noting motorist was in fact inebriated at time tavern served her alcohol); see also HAW. REV. STAT. ANN. § 281-78(b)(1) (LexisNexis 2011). Section 281-78(b)(1) states, “At no time under any circumstances shall any licensee or its employee: (1) [s]ell, serve, or furnish any liquor to, or allow the consummation of any liquor by: (A) [a]ny minor[, or] (B) [a]ny person at the time under the influence of liquor.” HAW. REV. STAT. ANN. § 281-78(b)(1).

have refused to extend such liability to social hosts.⁹² In *Johnston v. KFC National Management Co.*,⁹³ the court noted that the decision to amend the common-law rule in *Ono* was premised upon a clear trend across the country to impose a duty of care upon licensed vendors and upon a statute establishing a standard of conduct for liquor licensees.⁹⁴ The court concluded that, in the absence of both a clear judicial trend and a statutory enactment imposing liability upon social hosts, to change the common-rule exempting social hosts from liability would be inappropriate.⁹⁵

12. Idaho

The Idaho legislature has adopted legislation limiting social host and dram shop liability.⁹⁶ Under the statute, a person may not be held liable for selling or furnishing alcohol to another unless the provider knew or should have known that the recipient was under the legal drinking age or was visibly intoxicated.⁹⁷ The statute provides a cause of action in favor of injured third parties only.⁹⁸ The imbiber has no right of recovery for injuries sustained as a result of his own voluntary intoxication.⁹⁹ Additionally, a person who is a passenger in an automobile driven by an intoxicated person may not bring a cause of action against the person who provided the driver with alcohol for injuries sustained as a result of the driver's intoxication.¹⁰⁰ The statute applies to social hosts as well as licensed vendors of alcohol.¹⁰¹

13. Illinois

Illinois courts have refused to deviate from the common-law rule regarding the liabilities of social hosts.¹⁰² In *Wakulich v. Mraz*,¹⁰³ a teenage girl died of acute alcohol poisoning after drinking a quart of liquor.¹⁰⁴ Under a theory of negligence, the girl's mother sued the hosts who had furnished her daughter

92. See *Johnston v. KFC Nat'l Mgmt. Co.*, 788 P.2d 159, 162 (Haw. 1990) (holding change in common law inappropriate at this time).

93. 788 P.2d 159 (Haw. 1990).

94. *Id.* at 161-62 (discussing reasons for modifying common-law rule for commercial suppliers of alcohol).

95. *Id.* at 162.

96. IDAHO CODE ANN. § 23-808(1) (2009) (declaring legislative intent to limit liability).

97. *Id.* § 23-808(3)(a)-(b).

98. See *id.* § 23-808(4)(a)-(b) (preventing intoxicated person or his passenger from bringing claim).

99. *Id.*; see also *Coghlan v. Beta Theta Pi Fraternity*, 987 P.2d 300, 306 (Idaho 1999) (holding statute does not provide right of recovery to injured imbiber).

100. IDAHO CODE ANN. § 23-808(4)(b) (2009).

101. *Id.* § 23-808(1).

102. See *Wakulich v. Mraz*, 785 N.E.2d 843, 848 (Ill. 2003) (refusing to amend common-law rule where legislature has already taken action).

103. 785 N.E.2d 843 (Ill. 2003).

104. *Id.* at 846 (discussing facts of case).

with the alcohol and encouraged her to drink it.¹⁰⁵ The court held that Illinois common law does not recognize a cause of action for injuries arising out of the sale or gift of alcoholic beverages.¹⁰⁶ The plaintiff urged the court to amend the common-law rule exempting social hosts from liability; the court, however, refused to do so, noting the legislature's adoption of the Dramshop Act.¹⁰⁷ The court reasoned that the passage of the Dramshop Act, which created an exclusive statutory cause of action against dram shops for selling or giving alcoholic beverages to persons who subsequently injure third persons, preempted the entire field of alcohol-related liability from judicial review.¹⁰⁸

14. Indiana

In Indiana, common-law negligence liability regarding the provision of alcohol is restricted by statute.¹⁰⁹ Under Indiana law, a person who furnishes alcohol to another is not liable for damages caused by the intoxication unless two conditions are met: the person who procured the alcohol had actual knowledge that the recipient was visibly intoxicated and the intoxication was the proximate cause of the resulting injury.¹¹⁰ Injured third parties may recover damages from a social host who provides alcohol to a visibly intoxicated person.¹¹¹ In limited circumstances, a person who voluntarily consumes alcohol may bring a cause of action against the person who provided the alcohol for injuries sustained as a result of his own voluntary intoxication.¹¹² Under Indiana law, the age of the recipient is irrelevant to the liability of the alcohol provider.¹¹³ Whether the recipient is an adult or minor, a social host

105. *Id.* at 845-46 (discussing claims brought by mother).

106. *Id.* at 848 (refusing to override prior decision denying negligence claim against social host).

107. *Wakulich*, 785 N.E.2d at 848 (noting alcohol-related liability wholly within preview of legislature).

108. *Id.*; see also 235 ILL. COMP. STAT. ANN. 5/6-21(a) (West Supp. 2010). The statute limits civil liability for alcohol related injuries to dram shop owners and persons twenty-one years of age or older who pay for a hotel room knowing that the room will be used by underage persons for the unlawful consumption of alcohol. See 235 ILL. COMP. STAT. ANN. 5/6-21(a). The court observed that the legislature had considered on several occasions imposing some form of social host liability upon adults who furnish alcohol to underage persons, but that all such attempts never came to fruition. *Wakulich*, 785 N.E.2d at 849. The court reasoned that, since the legislature had deliberately chosen not to impose this sort of liability, it would be improper for the court to do so judicially. *Id.* But see *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 507 N.E.2d 1193, 1198 (Ill. App. Ct. 1987) (recognizing exception to common-law rule based on antihazing statute).

109. *Rauck v. Hawn*, 564 N.E.2d 334, 337 (Ind. Ct. App. 1990).

110. *Id.*; see also IND. CODE ANN. § 7.1-5-10-15.5(b)(1) (West 2005) (creating social host liability for knowingly furnishing alcohol to visibly intoxicated person).

111. See *Rauck*, 564 N.E.2d at 339 (recognizing cause of action against social host who gives alcohol to visibly intoxicated person).

112. IND. CODE ANN. § 7.1-5-10-15.5(c) (West 2005) (creating cause of action in favor of injured imbiber). The injured imbiber may bring a claim only if the provider had actual knowledge that the imbiber was visibly intoxicated at the time the alcohol was provided and the provision of the alcohol was the proximate cause of the imbiber's injuries. *Id.*

113. See *Thompson v. Ferdinand Sesquicentennial Comm., Inc.*, 637 N.E.2d 178, 180 (Ind. Ct. App. 1994) (refusing to hold social host liable for furnishing alcohol to minor absent visible intoxication).

will not be liable for any resulting damages unless the host had actual knowledge that the recipient was visibly intoxicated.¹¹⁴

15. Iowa

In Iowa, persons injured as a result of a social host who furnishes alcohol to a person under the legal drinking age may bring a negligence claim against the social host.¹¹⁵ This includes both third parties injured by an intoxicated underage drinker, as well as the underage drinkers themselves.¹¹⁶ Iowa courts have imposed liability on social hosts for furnishing alcohol to minors under the doctrine of negligence per se.¹¹⁷ The Iowa legislature has entered the field of liquor liability by adopting two statutes.¹¹⁸ The first shields social hosts from liability for furnishing alcohol to visibly intoxicated persons; the other statute specifically exposes licensed vendors to liability for selling alcohol to visibly intoxicated persons.¹¹⁹ Nevertheless, the Supreme Court of Iowa has held that such legislation does not preempt prior judicial rulings holding social hosts liable for furnishing alcohol to minors.¹²⁰

16. Kansas

In *Ling v. Jan's Liquors*,¹²¹ a motorist who was injured in a car accident with an intoxicated minor asked the Supreme Court of Kansas to recognize a cause of action against the vendor who sold the minor the alcohol.¹²² The court refused to recognize such a cause of action.¹²³ The court noted that, under the common law, suppliers of alcohol are not liable to victims of an intoxicated

114. *Id.*

115. See *Sage v. Johnson*, 437 N.W.2d 582, 584-85 (Iowa 1989) (holding social hosts liable to minors for injuries sustained as result of minors' own intoxication); *Bauer v. Dann*, 428 N.W.2d 658, 660 (Iowa 1988) (holding social hosts liable to third parties injured by intoxicated underage drinkers).

116. See *supra* note 115 (citing relevant Iowa social host cases).

117. See *Lewis v. State*, 256 N.W.2d 181, 191-92 (Iowa 1977). In *Lewis*, the plaintiff was killed when the car she was traveling in was struck by a car driven by an intoxicated minor who had purchased alcohol at a state-run liquor store. *Id.* at 184. The court held that the defendant breached its duty of reasonable care owed to the plaintiff by selling alcohol to the minor-driver in violation of a state criminal statute prohibiting the sale or gift of alcohol to a person under the legal drinking age. *Id.* at 189; see also IOWA CODE ANN. § 123.47 (West Supp. 2011). The court held that the statute set a "minimum standard" of care, the violation of which could be the proximate cause of injuries sustained by innocent third parties. *Lewis*, 256 N.W.2d at 189, 191-92. Although *Lewis* involved the commercial sale of alcohol to a person under the legal drinking age, the Supreme Court of Iowa has applied that same reasoning to the social host context. See *Bauer*, 428 N.W.2d at 661 (holding social hosts liable under theory of negligence per se).

118. See IOWA CODE ANN. § 123.49(1) (West Supp. 2011) (shielding from liability social hosts who furnish alcohol to intoxicated persons); *Id.* § 123.92 (holding licensed vendors liable for selling alcohol to visibly intoxicated persons).

119. See *supra* note 118.

120. See *Bauer*, 428 N.W.2d at 660-61.

121. 703 P.2d 731 (Kan. 1985).

122. *Id.* at 735 (addressing gravamen of plaintiff's case).

123. *Id.* at 738-39 (stating court's holding).

tortfeasor.¹²⁴ The court declined to amend the common-law rule, reasoning that doing so would constitute a public policy decision best left to the legislature.¹²⁵ Lastly, the court refused to recognize a cause of action under the doctrine of negligence per se.¹²⁶

Later, in *Bland v. Scott*,¹²⁷ the representative of a deceased motorist asked the Supreme Court of Kansas to recognize a cause of action against a social host who had provided alcohol to the minor who killed the motorist in a car accident.¹²⁸ The court, relying on the reasoning in *Ling*, refused to recognize such a claim against a social host based either upon common-law negligence principles or the doctrine of negligence per se.¹²⁹

17. Kentucky

Kentucky case law is completely silent on the issue of social host liability.¹³⁰ Indeed, there is not a single Kentucky case addressing the liabilities of social hosts.¹³¹ Kentucky's legislature, however, has codified the common-law rule shielding social hosts from liability for the negligent distribution of alcohol.¹³² Section 413.241 of the Kentucky Revised Statutes provides that "the consumption of intoxicating beverages . . . is the proximate cause of any

124. *Id.* at 739 (citing legislature's failure to create civil cause of action despite prior consideration).

125. *See Ling*, 703 P.2d at 739. In 1949, the Kansas legislature repealed its dram shop statute. *Id.* at 738-39. On several occasions, the Kansas legislature had reconsidered imposing limited dram shop liability, but had never actually adopted legislation. *Id.* at 739. Furthermore, the court felt that the substance of this particular issue fell squarely within the realm of public policy, and, as such, was particularly suited to be decided by the legislature. *Id.*

126. *Id.* at 738. The plaintiff had argued that a state liquor law establishing criminal penalties for the sale of alcohol to minors created a legal duty to abstain from such conduct. *Id.* The court noted, however, that this statute was enacted in the same year that the dram shop statute was repealed. *Id.* at 738-39. The court, therefore, reasoned that, had the legislature intended the new criminal statute to impose civil liability, it would have explicitly said so. *Id.* at 739.

127. 112 P.3d 941 (Kan. 2005).

128. *Id.* at 945 (setting forth primary issues of case).

129. *Id.* at 949-50 (discussing court's holding). The court acknowledged, however, that "[t]he states are widely split on liability to third parties arising from the dispensing of alcohol in social settings." *Id.* at 949.

130. *See Estate of Vosnick v. RRJC, Inc.*, 225 F. Supp. 2d 737, 740 (E.D. Ky. 2002) (noting total dearth of Kentucky case law on social host liability).

131. *Id.* (noting inapplicability of several duty of care cases to specific issue of social host liability).

132. *See KY. REV. STAT. ANN. § 413.241* (LexisNexis 2005) (defining liability for sale or gift of alcoholic beverages), *declared unconstitutional in part by Taylor v. King*, No. 2009-CA-001599-MR, 2010 WL 3810797 (Ky. Ct. App. Oct. 1 2010) (opinion not final) (holding section 413.241 unconstitutional to extent it prohibits recovery of punitive damages). Section 413.241(1) provides that "the consumption of intoxicating beverages . . . is the proximate cause of any injury . . . inflicted by an intoxicated person upon himself or another person." *Id.* § 413.241(1). Notwithstanding that provision, section 413.241(2) provides that a dram shop, not a social host, may be liable for negligently serving a visibly intoxicated patron. *Id.* § 413.241(2). The court in *Taylor* noted that section 413.241 effectively prohibits an award of punitive damages against a dram shop because under Kentucky law, punitive damages may only be awarded if the defendant's conduct was the proximate cause of injury to the plaintiff. *Taylor*, 2010 WL 3810797, at *3. The court held that such an "implicit prohibition on recovery of punitive damages violates the jural rights and separation-of-powers provisions of the Kentucky Constitution." *Id.* at *1.

injury . . . inflicted by an intoxicated person upon himself or another person.”¹³³ The plain language of the statute suggests that a social host can never be found liable for the negligent provision of alcohol.¹³⁴ Kentucky courts, however, have yet to interpret this statute as applied to social hosts.¹³⁵

18. Louisiana

Under the Louisiana dram shop statute, social hosts are immune from liability for injuries resulting from the intoxication of social guests who are of legal drinking age.¹³⁶ When a social host furnishes alcohol to a person under the legal drinking age, Louisiana courts utilize a traditional duty-risk analysis to determine whether the social host violated general negligence principles.¹³⁷ Louisiana courts also recognize a cause of action against a social host for negligently furnishing narcotics to another person.¹³⁸ In such cases, liability is again determined under the traditional duty-risk analysis.¹³⁹

19. Maine

The Maine Liquor Liability Act provides the exclusive remedy against a social host for claims by persons injured as a result of the host’s service of alcohol.¹⁴⁰ Under the Act, a social host who negligently or recklessly serves alcohol to a minor or visibly intoxicated person is liable for damages proximately caused by the recipient’s consumption of the alcohol.¹⁴¹ A minor

133. KY. REV. STAT. ANN. § 413.241 (1) (LexisNexis 2005).

134. *See id.*; *see also Estate of Vosnick*, 225 F. Supp. 2d at 742 (attempting to predict future applicability of statute to social hosts). The court noted that the plain language of the statute “seems to amount to a specific rejection of social host liability.” *Estate of Vosnick*, 225 F. Supp. 2d at 742. The court concluded, however, that it was unlikely that the legislature intended the statute to apply to social hosts. *Id.* The court ultimately predicted that Kentucky courts would only recognize a cause of action against social hosts for serving alcohol to minors. *Id.*

135. *See Estate of Vosnick*, 225 F. Supp. 2d at 742.

136. LA. REV. STAT. ANN. § 9:2800.1(c) (2009).

137. *Stewart v. Daiquiri Affair, Inc.*, 20 So. 3d 1041, 1046 (La. 2009) (using traditional negligence analysis to determine liability for providing alcohol to minors).

138. *See Cook v. Kendrick*, 931 So. 2d 420, 427-28 (La. Ct. App. 2006) (holding jury warranted in finding host negligent for furnishing drugs to guest who later overdosed). In *Cook*, the plaintiffs brought a wrongful death suit against the defendant for negligently providing narcotics to their son, who died of a drug overdose. *Id.* at 423. The jury found the plaintiff’s son to be eighty percent at fault and the defendant to be twenty percent at fault. *Id.* On appeal, the court held that the jury did not commit manifest error in concluding that the defendant’s conduct contributed to the death of the decedent. *Id.* at 429. The court reasoned that, under a duty-risk analysis, the jury was justified in finding the defendant liable for providing narcotics to the decedent. *Id.*

139. *Id.* at 427.

140. ME. REV. STAT. ANN. tit. 28-A, § 2511 (2007).

141. *Id.* § 2506(3) (describing negligent service of alcohol). “Service of liquor to a minor or to an intoxicated individual is negligent if the server knows or if a reasonable and prudent person in similar circumstances would know that the individual being served is a minor or is visibly intoxicated.” *Id.* Additionally, the Act states:

Service of liquor is reckless if a server intentionally serves liquor to an individual when the server

is defined as a person under the age of eighteen.¹⁴² Any person who suffers injury may bring an action against a social host for negligently or recklessly serving alcohol to another, except that, under the Act, an intoxicated individual who is eighteen or older is precluded from bringing a claim against a social host for injuries resulting from his own voluntary intoxication.¹⁴³

20. Maryland

Maryland does not recognize any form of liquor liability against licensed vendors or social hosts.¹⁴⁴ Maryland courts have refused to amend the common-law rule, reasoning that it is the duty of the legislature, not the courts, to implement such policy decisions.¹⁴⁵ When considering whether to recognize social host liability, the Maryland Court of Special Appeals noted that doing so would be particularly anomalous in light of the fact that Maryland has declined to extend liability to licensed vendors.¹⁴⁶

21. Massachusetts

Massachusetts courts do not recognize a cause of action against a social host in favor of an adult guest served by the host for injuries arising out of the guest's own voluntary consumption of alcohol.¹⁴⁷ This is true even for persons between the ages of eighteen and twenty, who, although legally adults, are under the legal drinking age of twenty-one.¹⁴⁸ Massachusetts courts, however,

knows that the individual being served is a minor or is visibly intoxicated and the server consciously disregards an obvious and substantial risk that serving liquor to that individual will cause physical harm to the drinker or to others.

Id. § 2507(3).

142. ME. REV. STAT. ANN. tit. 1, § 73 (1989) (defining age of majority as eighteen years of age and older).

143. ME. REV. STAT. ANN. tit. 28-A, § 2504(2)(A) (2007).

144. See *Wright v. Sue & Charles, Inc.*, 749 A.2d 241, 246 (Md. Ct. Spec. App. 2000) (affirming common-law rule exempting provider of alcohol from liability).

145. See *supra* notes 31-33 and accompanying text (discussing Maryland courts' rationale for refusing to amend common-law rule regarding social hosts).

146. See *Wright*, 749 A.2d at 247 (noting "[n]o jurisdiction which refuses to sanction Dram Shop law recognizes social host liability").

147. See *supra* note 27 (discussing Massachusetts decision refusing to recognize claim against social host in favor of injured adult guest).

148. See *Panagakos v. Walsh*, 749 N.E.2d 670, 672-73 (Mass. 2001) (holding eighteen-year-old could not recover for injuries resulting from own consumption of alcohol); *Hamilton v. Ganas*, 632 N.E.2d 407, 407 (Mass. 1994) (foreclosing existence of duty owed by social hosts to nineteen-year-old who voluntarily consumed alcohol). The court in *Hamilton* reasoned that, as an adult, the plaintiff was responsible for his own conduct. *Hamilton*, 632 N.E.2d at 407. The court also observed that the legislature enacted a dram shop statute providing that a licensed vendor shall not be liable for negligently serving alcohol to an intoxicated person who injures himself in the absence of willful, wanton, or reckless conduct on the part of the licensed vendor. *Id.* at 408 n.4. The court reasoned that, in light of this articulation of public policy, it would be anomalous to hold social hosts to a stricter standard. *Id.* In *Panagakos*, the estate of the deceased eighteen-year-old sought to avoid the precedent set in *Hamilton* by asking the court to adopt the principles set out in the *Restatement (Second) of Torts* sections 321 and 322. *Panagakos*, 749 N.E.2d at 672. Under section 321, "[i]f the actor does

recognize a cause of action against a social host in favor of a third party injured by an intoxicated guest's negligent operation of an automobile where the social host knew or should have known that the guest was drunk, but nevertheless, allowed the guest to consume alcohol.¹⁴⁹

22. Michigan

Michigan courts do not recognize a cause of action against a social host who furnishes alcohol to an adult guest for injuries sustained as a result of the guest's intoxication.¹⁵⁰ This is true even where the adult guest is visibly intoxicated at the time he is served.¹⁵¹ Michigan courts, however, recognize a cause of action against a social host who furnishes alcohol to a person under the legal drinking age through the doctrine of negligence per se.¹⁵² Accordingly, a social host who violates any state statute criminalizing the sale or provision of alcohol to a person under twenty-one years of age may be held liable for injuries sustained by third parties and the underage drinker himself.¹⁵³

an act, and subsequently realizes or should realize that it has created an unreasonable risk of causing physical harm to another, he is under a duty to exercise reasonable care to prevent the risk from taking effect." RESTATEMENT (SECOND) OF TORTS § 321 (1965). Under section 322,

If the actor knows or has reason to know that by his conduct, whether tortious or innocent, he has caused such bodily harm to another as to make him helpless and in danger of further harm, the actor is under a duty to exercise reasonable care to prevent such further harm.

Id. § 322. The court concluded that, if it were to recognize these two provisions of the Restatement, it would effectively overrule *Hamilton*, for "[a] social host who provides liquor to an underage drinker or to an already intoxicated drinker would or should realize that doing so 'create[s] an unreasonable risk of causing physical harm' to that drinker" in violation of section 321. *Panagakos*, 749 N.E.2d at 673 (quoting RESTATEMENT (SECOND) OF TORTS § 321 (1965)). Likewise, "a social host who provides liquor to an underage drinker or to an already intoxicated drinker may render the drinker 'helpless and in danger of further harm' from intoxication" in violation of section 322. *Id.* (quoting RESTATEMENT (SECOND) OF TORTS § 322 (1965)). Unwilling to overrule the precedent established in *Hamilton*, the court declined to adopt sections 321 and 322 of the Restatement. *Id.* The court also held that the violation of a state statute prohibiting the provision of alcohol to a person under the age of twenty-one does not create an independent ground for civil liability. *Id.* at 672 n.4.

149. See *supra* note 23 (discussing Massachusetts courts' willingness to impose social host liability in favor of injured third parties).

150. See *Fournier v. Moretti*, No. 267625, 2006 WL 1867702, at *1 (Mich. Ct. App. July 6, 2006) (unpublished decision). The rationale for not extending liability to social hosts for serving alcohol to adults is that social hosts are not among those who could be found to have proximately caused any resulting injury. *Id.*

151. *Id.* (citing *Leszczynski v. Johnston*, 399 N.W.2d 70, 73 (Mich. Ct. App. 1986)).

152. *Thaut v. Finley*, 213 N.W.2d 820, 822 (Mich. Ct. App. 1973) (holding violation of statute prohibiting furnishing alcohol to minors negligence per se); see also MICH. COMP. LAWS ANN. § 436.1701 (West Supp. 2010) (making it misdemeanor to negligently sell or furnish alcohol to minors).

153. See *Longstreth v. Gensel*, 377 N.W.2d 804, 813 (Mich. 1985) (recognizing cause of action in favor of injured minor imbiber under doctrine of negligence per se); *Thaut*, 213 N.W.2d at 822 (recognizing cause of action in favor of injured third party under doctrine of negligence per se).

23. Minnesota

Minnesota courts have never recognized under the common law a cause of action against a social host for furnishing alcohol.¹⁵⁴ The Minnesota legislature, however, has adopted a statute that allows a third party to recover from a social host who either “knowingly or recklessly” permitted a person under the age of twenty-one to consume alcohol.¹⁵⁵ Under the statute, the intoxicated minor has no cause of action against the social host for injuries resulting from his own voluntary intoxication.¹⁵⁶

24. Mississippi

The Mississippi legislature has declared that “the consumption of intoxicating beverages, rather than the sale or serving or furnishing of such beverages, is the proximate cause of any injury, including death and property damage, inflicted by an intoxicated person upon himself or upon another person.”¹⁵⁷ Under Mississippi law, “no social host who serves or furnishes any intoxicating beverage to a person who may lawfully consume such intoxicating beverage shall be liable” for any resulting damages.¹⁵⁸ Mississippi courts have yet to recognize a cause of action against a social host for furnishing alcohol to a person who could not lawfully consume the alcohol.¹⁵⁹

25. Missouri

Missouri has never recognized a cause of action against a social host for the negligent distribution of alcohol.¹⁶⁰ According to public policy in Missouri, it is the consumption, rather than the furnishing, of alcohol that is the proximate

154. See *Koehnen v. Dufuor*, 590 N.W.2d 107, 111-12 (Minn. 1999) (noting social host liability nonexistent at common law).

155. See MINN. STAT. ANN. § 340A.90 (West 2004) (creating social host liability for injuries caused by intoxicated minor).

156. *Id.* § 340A.90(c).

157. MISS. CODE ANN. § 67-3-73(1) (West 1999).

158. *Id.* § 67-3-73(3).

159. See *Boutwell v. Sullivan*, 469 So. 2d 526, 529 (Miss. 1985) (declining to recognize social host liability). In *Boutwell*, the widow of a man killed in an auto accident by an intoxicated driver brought suit against the social hosts who had allegedly served the driver with alcohol while he was in a state of visible intoxication. *Id.* at 527. The plaintiff argued that the defendants should be found liable under the doctrine of negligence per se because they had violated a statute making it unlawful for “any permittee or other person to sell or furnish any alcoholic beverage to any person . . . who is visibly intoxicated.” *Id.*; see also MISS. CODE ANN. § 67-1-83(1) (West Supp. 2010) (making it unlawful to serve alcohol to alcoholic or visibly intoxicated person). The court rejected this argument, holding that the statute did not apply to social hosts. *Boutwell*, 469 So. 2d at 528. The court then refused to recognize social host liability under the common law. *Id.* The court reasoned that the issue of social host liability, which involves strong public policy considerations, is one that should be decided by the legislature. *Id.* at 529.

160. See *McClure v. McIntosh*, 770 S.W.2d 406, 408 (Mo. Ct. App. 1989) (noting social hosts never held liable for injuries caused by intoxicated driver).

cause of injuries caused by an imbiber.¹⁶¹

26. Montana

In Montana, a person who furnishes alcohol to another may not be held liable unless

(a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age; (b) the consumer was visibly intoxicated; or (c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.¹⁶²

The consumer of alcohol may not bring a claim against the alcohol provider for injuries sustained as a result of the consumer's intoxication unless "(a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or (b) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did contain alcohol."¹⁶³

27. Nebraska

Nebraska courts have adhered to the common-law rule shielding both licensed vendors and social hosts from liability for the negligent sale or gift of alcoholic beverages.¹⁶⁴ In *Holmes v. Circo*,¹⁶⁵ the plaintiff, who was injured in a car accident by an inebriated driver, sued the tavern owner, alleging that the tavern had negligently served alcohol to the inebriated driver.¹⁶⁶ The Supreme Court of Nebraska refused to recognize the plaintiff's negligence claim against the tavern, relying on the common-law rule that "the proximate cause of the injury was the act of the purchaser in drinking the liquor and not the act of the vendor in selling it."¹⁶⁷ The court observed that imposing a common-law duty of care upon licensed vendors would create much uncertainty, including whether liability should also extend to social hosts.¹⁶⁸ The court concluded that

161. *Id.* (discussing public policy behind statute); see also MO. ANN. STAT. § 537.053 (West 2008) (limiting dram shop liability to sale of alcohol to minors or visibly intoxicated persons). The statute states that "it has been and continues to be the policy of this state to follow the common law of England . . . to prohibit dram shop liability and to follow the common law rule that furnishing alcoholic beverages is not the proximate cause of injuries inflicted by intoxicated persons." MO. ANN. STAT. § 537.053.

162. MONT. CODE ANN. § 27-1-710(3) (2009).

163. *Id.* § 27-1-710(5).

164. See *Holmes v. Circo*, 244 N.W.2d 65, 68 (Neb. 1976) (explaining common-law rule concerning liquor liability).

165. 244 N.W.2d 65 (Neb. 1976).

166. *Id.* at 66 (discussing facts of case).

167. *Id.* at 68 (explaining court's holding).

168. *Id.* at 70 (discussing ramifications of imposing common-law duty of care on taverns).

such policy decisions are best left to the legislature.¹⁶⁹ The court also held that violation of a state statute criminalizing the sale or gift of alcohol to minors and visibly intoxicated persons does not constitute negligence per se.¹⁷⁰

28. Nevada

In Nevada, if an intoxicated guest causes injury to himself or a third party, the social host cannot be held liable for any damages related to the injury.¹⁷¹ Nevada courts have decided that it is the province of the legislature, not the courts, to modify the common-law rule.¹⁷² Nevada courts have also held that violations of criminal liquor laws prohibiting the sale of alcohol to minors and visibly intoxicated persons do not constitute negligence per se.¹⁷³

29. New Hampshire

In New Hampshire, a social host who negligently furnishes alcohol to another person may be found liable to third persons injured as a result of the recipient's intoxication.¹⁷⁴ In order for one who is injured as a result of his own voluntary intoxication to recover from the social host who served him, the social host's provision of alcohol must have been reckless.¹⁷⁵ The age and level of intoxication of the recipient are factors to be considered by the finder of fact in determining whether the social host's conduct was negligent or reckless.¹⁷⁶

30. New Jersey

The New Jersey legislature has limited the social host-liability rule adopted by the New Jersey Supreme Court in *Kelly v. Gwinnell*.¹⁷⁷ Under section

169. *Holmes*, 244 N.W.2d at 70 (stating policy decisions best left to legislature).

170. *Id.* at 67. The court noted that, from 1881 to 1917, Nebraska had a dram shop statute which provided for broad civil liability against those who negligently distributed alcohol. *Id.* The court reasoned that, had the legislature desired to impose civil liability upon licensed vendors and social hosts when it adopted the Nebraska Liquor Control Act in 1935, it would have expressly done so. *Id.* The court concluded that the legislature did not intend for violations of the criminal liquor distribution statute to create civil liability. *Id.*; see also NEB. REV. STAT. § 53-180 (2010) (prohibiting sale or gift of alcohol to minors or mentally incompetent persons).

171. See *Hinegardner v. Marcor Resorts, L.P. V.*, 844 P.2d 800, 802 (Nev. 1993) (noting Nevada's adherence to common-law rule refusing to recognize liability for selling or furnishing alcohol).

172. *Id.* (citing *Hamm v. Carson City Nugget, Inc.*, 450 P.2d 358, 359 (Nev. 1969)).

173. See *Bell v. Alpha Tau Omega Fraternity, Eta Epsilon Chapter*, 642 P.2d 161, 162 (Nev. 1982) (holding violation of statute prohibiting sale of alcohol to minor not negligence per se); *Hamm*, 450 P.2d at 360 (holding violation of statute prohibiting sale of alcohol to intoxicated person not negligence per se).

174. *Thompson v. McClure*, No. 99-C-0084, 2001 WL 34012411, at *2 (N.H. Super. Ct. Dec. 28, 2001) (unpublished decision).

175. *Hickingbotham v. Burke*, 662 A.2d 297, 301 (N.H. 1995). "A social host's service of alcohol would be reckless if the host 'consciously disregard[ed] a substantial and unjustifiable risk' of a high degree of danger." *Id.* (quoting BLACK'S LAW DICTIONARY 1270 (6th ed. 1990)).

176. See *id.* at 302.

177. See N.J. STAT. ANN. § 2A:15-5.6 (West 2000) (stating conditions of recovery for damages arising

2A:15-5.6, a social host may be liable to third parties injured as a result of the host's negligent provision of alcohol to a visibly intoxicated person provided that "[t]he injury arose out of an accident caused by the negligent operation of a vehicle by the visibly intoxicated person who was provided alcoholic beverages by [the] social host."¹⁷⁸ Furthermore, "[n]o social host shall be held liable to a person who has attained the legal age to purchase and consume alcoholic beverages for damages suffered as a result of the social host's negligent provision of alcoholic beverages to that person."¹⁷⁹ A person under the legal drinking age may bring a cause of action against a social host who negligently served him or her with alcohol while in a visibly intoxicated state for injuries resulting from his or her own voluntary intoxication.¹⁸⁰ Likewise, a social host who furnishes alcohol to a visibly intoxicated minor knowing that the minor intends to drive soon after, may also be held liable to a third party injured as a result of subsequent drunk driving by the minor.¹⁸¹

31. New Mexico

Under New Mexico law, a social host may not be held liable for damages resulting from a guest's intoxication unless the alcohol was "provided recklessly in disregard of the rights of others, including the social guest."¹⁸² Both injured third parties and injured imbibers themselves may recover from the social host who served them as long as the social host's service of alcohol was reckless.¹⁸³

32. New York

New York courts have declined to amend the common-law rule shielding social hosts from liability for negligently furnishing alcohol to their guests.¹⁸⁴ Notwithstanding this fact, the legislature has created an exception to the

from social host negligence); *Kelly v. Gwinell*, 476 A.2d 1219, 1224 (N.J. 1984), *superseded by statute*, 1987 N.J. Laws 1804. In *Kelly*, the New Jersey Supreme Court held that a social host is liable for injuries inflicted on a third party by an intoxicated guest when the social host knowingly provides alcohol to an intoxicated guest who will soon be driving. *Kelly*, 476 A.2d at 1224. In enacting section 2A:15-5.7 in 1987, the New Jersey legislature limited *Kelly*'s scope by restricting "a social host's liability to an adult for the negligent provision of alcoholic beverages." *Wagner v. Schlue*, 605 A.2d 294, 295 n.2 (N.J. Super. Ct. Law Div. 1992).

178. N.J. STAT. ANN. § 2A:15-5.6.

179. *Id.* § 2A:15-5.7.

180. *Camp v. Lummino*, 800 A.2d 234, 236 (N.J. Super. Ct. App. Div. 2002) (holding section 2A:15-5.6 does not prohibit suit by underage drinker against social host).

181. *Linn v. Rand*, 356 A.2d 15, 19 (N.J. Super. Ct. App. Div. 1976) (rejecting immunity of social host who negligently provides alcohol to minor guest).

182. N.M. STAT. ANN. § 41-11-1(E) (1996) (providing exclusive remedy against social hosts for provision of alcohol).

183. *Id.*

184. See *D'Amico v. Christie*, 518 N.E.2d 896, 899 (N.Y. 1987) (refusing to recognize social host liability under common law). The court in *D'Amico* also held that a statute creating liability for the unlawful sale of alcohol did not apply to social hosts. *Id.* at 898 (implying statute only applied to sale of alcohol for profit).

common-law rule by adopting a statute creating a cause of action against a social host who negligently furnishes alcohol to a person under the legal drinking age in favor of a third person injured by the intoxicated underage guest.¹⁸⁵ The statute, however, does not create a cause of action in favor of one injured as a result of his own voluntary intoxication.¹⁸⁶

33. North Carolina

The Supreme Court of North Carolina in *Hart v. Ivey*¹⁸⁷ clearly defined the liabilities of social hosts.¹⁸⁸ In *Hart*, an intoxicated minor, who had been served alcohol at a party hosted by the defendants, drove and collided with the plaintiff's vehicle causing injury to the plaintiff.¹⁸⁹ The plaintiff brought suit on two grounds: that the defendants were negligent per se for violating a state statute prohibiting the provision of alcohol to persons under the age of twenty-one and that the defendants, as social hosts, were negligent under common-law principles for serving alcohol to a person who they knew or should have known was under the influence of alcohol and would be driving an automobile soon thereafter.¹⁹⁰ The court held that violation of the state liquor statute did not constitute negligence per se.¹⁹¹ The court reasoned that the purpose of the statute was to stop minors from drinking alcohol, not to protect the general public from the dangers of drunk driving.¹⁹² The court concluded that if the purpose of the statute was to protect the public, it should not be limited to persons under twenty-one years of age, for adult drivers under the influence of alcohol can be just as dangerous as intoxicated minor drivers.¹⁹³

Addressing the issue of common-law negligence, the court held that a social host may be held liable to third parties for furnishing alcohol to a person the host knew or should have known was intoxicated and would soon thereafter drive an automobile.¹⁹⁴ The court reasoned that such conduct constitutes a breach of the duty of reasonable care and can be the proximate cause of any resulting injuries to third parties because a man of ordinary prudence would know that providing alcohol to an intoxicated person who intends to drive

185. N.Y. GEN. OBLIG. LAW § 11-100 (McKinney 2010).

186. *Searley v. Wegmans Food Mkts., Inc.*, 807 N.Y.S.2d 768, 768-69 (N.Y. App. Div. 2005).

187. 420 S.E.2d 174 (N.C. 1992).

188. *Id.* at 177-78 (stating court's holding).

189. *Id.* at 175.

190. *Id.* at 176 (identifying claims against defendants); *see also* N.C. GEN. STAT. § 18B-302 (2009) (making it unlawful to furnish alcohol to person under twenty-one years of age).

191. *Hart*, 420 S.E.2d at 177 (deciding whether violation of statute constitutes negligence per se). In North Carolina, "[w]hen a statute imposes a duty on a person for the protection of others . . . it is a public safety statute and a violation of such a statute is negligence *per se* unless the statute says otherwise." *Id.*

192. *Id.*

193. *Hart v. Ivey*, 420 S.E.2d 174, 177 (N.C. 1992) (stating court's reasoning).

194. *Id.* at 178.

creates a foreseeable risk of harm to the public.¹⁹⁵ The court concluded that social hosts owe a duty to the public not to serve alcohol to an intoxicated individual who intends to drive later.¹⁹⁶

34. North Dakota

In North Dakota, the legislature has created a statutory cause of action “against any person who knowingly disposes, sells, barter, or gives away alcoholic beverages to a person under twenty-one years of age, an incompetent, or an obviously intoxicated person.”¹⁹⁷ The statute creates a cause of action in favor of third parties injured as a result of the intoxication.¹⁹⁸ The intoxicated person, however, is barred from bringing a cause of action under the statute for injuries sustained as a result of his own voluntary intoxication.¹⁹⁹ Likewise, an adult passenger in an automobile driven by an intoxicated person may not recover from the person who provided the driver with alcohol for injuries sustained as a result of the driver’s intoxication.²⁰⁰ The statute creates a cause of action against both commercial vendors and social hosts.²⁰¹

35. Ohio

In Ohio, a social host may be held liable for damages to a third party caused by the intoxication of a person under the legal drinking age, to whom the social host furnished alcohol.²⁰² The Supreme Court of Ohio has recognized such liability under the doctrine of negligence per se.²⁰³ Absent a statutory violation, Ohio courts adhere to the common-law rule exempting social hosts from liability for negligently furnishing alcohol to their guests.²⁰⁴

195. *Id.*; see also *Smith v. Winn-Dixie Charlotte, Inc.*, 542 S.E.2d 288, 293-94 (N.C. Ct. App. 2001) (recognizing unreasonableness of furnishing alcohol to visibly intoxicated person about to drive vehicle).

196. *Hart*, 420 S.E.2d at 178.

197. N.D. CENT. CODE § 5-01-06.1 (2006).

198. *Id.*

199. *Id.* The statute states,

No claim for relief . . . may be had on behalf of the intoxicated person nor on behalf of the intoxicated person’s estate or personal representatives, nor may a claim for relief be had on behalf of an adult passenger in an automobile driven by an intoxicated person or on behalf of the passenger’s estate or personal representatives.

Id.

200. *Id.*

201. *Born v. Mayers*, 514 N.W.2d 687, 690 (N.D. 1994).

202. *Mitseff v. Wheeler*, 526 N.E.2d 798, 800 (Ohio 1988) (finding statutory duty to refrain from furnishing alcohol to persons under legal drinking age).

203. See *id.* (recognizing statutory duty to refrain from providing alcohol to minors); see also OHIO REV. CODE ANN. § 4301.69 (LexisNexis Supp. 2011) (prohibiting furnishing of alcohol to persons under legal drinking age).

204. *Morrison v. Fleck*, 697 N.E.2d 1064, 1071 (Ohio Ct. App. 1997) (denying social host liability for provision of alcohol to adults); see also *Settlemyer v. Wilmington Veterans Post No. 49, Am. Legion, Inc.*, 464

36. Oklahoma

Oklahoma adheres to the common-law rule that the voluntary consumption of alcohol, rather than its dissemination, is the sole proximate cause of any resulting injuries.²⁰⁵ The Supreme Court of Oklahoma, however, has recognized an exception to this rule in the context of dram shop operators.²⁰⁶ In *Brigance v. Velvet Dove Restaurant, Inc.*,²⁰⁷ the court held that commercial vendors of alcohol could be found liable for the negligent sale of alcohol to a visibly intoxicated person.²⁰⁸ This exception to the common-law rule, however, does not apply to social hosts.²⁰⁹

37. Oregon

Under Oregon law, “[a] . . . guest who voluntarily consumes alcoholic beverages served by . . . a social host does not have a cause of action, based on statute or common law, against the person serving the alcoholic beverages, even though the alcoholic beverages are served to the . . . guest while the . . . guest is visibly intoxicated.”²¹⁰ Although the imbiber of alcohol has no cause of action against the social host who served him, a social host may be held liable to innocent third parties injured as a result of a guest’s intoxication where the social host served the guest while the guest was in a state of visible intoxication.²¹¹ A social host may also be held liable to third parties injured by a person under twenty-one years of age who was served alcohol by the social

N.E.2d 521, 524 (Ohio 1984) (giving reasons for shielding social hosts from liability), *superseded by statute*, 1986 Ohio Laws, Part III, 5711, *as recognized in* *Lesnau v. Andate Enters., Inc.*, 756 N.E.2d 97 (Ohio 2001).

205. See *McClelland v. Harvie Kothe-Ed Rieman*, Post No. 1201, *Veterans of Foreign Wars of U.S., Inc.*, 770 P.2d 569, 571-72 (Okla. 1989) (stating common-law proximate causation rule for alcohol-related liability).

206. See *Brigance v. Velvet Dove Rest., Inc.*, 725 P.2d 300, 305 (Okla. 1986) (abrogating common-law rule for dram shop operators).

207. 725 P.2d 300 (Okla. 1986).

208. *Id.* at 304-05. In determining that commercial vendors have a duty to exercise reasonable care not to sell alcohol to a visibly intoxicated person, the court opined, “We believe the application of the old common law rule of a tavern owner’s nonliability in today’s automotive society is unrealistic, inconsistent with modern tort theories and is a complete anachronism within today’s society.” *Id.* at 304. The court held all people have a duty not to subject others to an unreasonable risk of harm, and concluded that “[i]t is not unreasonable to expect a commercial vendor who sells alcoholic beverages . . . to a person he knows or should know . . . is already intoxicated, to foresee the unreasonable risk of harm to others who may be injured by such person’s impaired ability to operate an automobile.” *Id.* The court held that this duty is based upon both common-law principles and statute. *Id.*

209. See *Battles v. Cough*, 947 P.2d 600, 602-03 (Okla. Civ. App. 1997) (holding *Brigance* exception to common-law rule not applicable to social hosts); see also *Teel v. Warren*, 22 P.3d 234, 236 (Okla. Civ. App. 2001) (holding providing alcohol to minor in violation of statute does not create social host liability).

210. OR. REV. STAT. ANN. § 471.565(1) (West 2003).

211. *Id.* § 471.565(2). It is important to note that only “innocent” third parties may bring a cause of action against a social host for serving alcohol to a visibly intoxicated guest. *Id.* § 471.565(2)(b). An injured third party is barred from bringing a cause of action against a social host if the third party “substantially contribute[d] to the intoxication of the . . . guest by: (A) [p]roviding or furnishing alcoholic beverages to the . . . guest; (B) [e]ncouraging the . . . guest to consume . . . alcoholic beverages . . . ; or (C) [f]acilitating the consumption of alcoholic beverages by the . . . guest in any manner.” *Id.*

host where “a reasonable person would have determined that identification should have been requested or that the identification exhibited was altered or did not accurately describe the person to whom the alcoholic liquor was . . . served.”²¹²

38. Pennsylvania

In Pennsylvania, a social host who furnishes alcohol to a minor guest is negligent per se.²¹³ Social hosts who serve alcohol to persons under twenty-one years of age can be held liable for injuries suffered by a third party that proximately result from the minor guest’s intoxication.²¹⁴ Social hosts can likewise be held liable for the minor guest’s own injuries that are the proximate result of the minor guest’s voluntary intoxication.²¹⁵ Social hosts, however, may not be held liable for furnishing alcohol to adult guests, even if they are visibly intoxicated.²¹⁶

39. Rhode Island

In Rhode Island, a social host may not be held liable to a third party for injuries suffered by an intoxicated guest absent the existence of a special relationship.²¹⁷ A special relationship exists between a plaintiff and defendant in situations where the plaintiff has a reasonable expectation that the defendant will anticipate harmful acts of third persons and take appropriate steps to protect the plaintiff from harm.²¹⁸ In *Martin v. Marciano*,²¹⁹ an intoxicated minor, who was a guest at a party hosted by the defendant, attacked and injured the plaintiff.²²⁰ The Rhode Island Supreme Court held that the defendant owed the plaintiff a duty of reasonable care to protect him from harm at the hands of

212. *See id.* § 471.567(1).

213. *See Douglas v. Schwenk*, 479 A.2d 608, 611 (Pa. Super. Ct. 1984). In *Douglas*, the court reasoned that a state statute setting the drinking age at twenty-one-years-old evidenced a legislative judgment that persons younger than twenty-one are incompetent to handle alcohol. *Id.* The court concluded that the purpose of the statute was “to protect both minors and the public at large from the perceived deleterious effects of serving alcohol to persons under twenty-one years of age.” *Id.* (quoting *Congini v. Portersville Valve Co.*, 470 A.2d 515, 518 (Pa. 1983)).

214. *Id.* (finding defendants negligent per se).

215. *Congini*, 470 A.2d at 518 (noting service of alcohol to minor forms basis of minor’s claim).

216. *See Klein v. Raysinger*, 470 A.2d 507, 510-11 (Pa. 1983) (refusing to recognize claim against social host for furnishing alcohol to visibly intoxicated adult); *Burkhart v. Brockway Glass Co.*, 507 A.2d 844, 847 (Pa. Super. Ct. 1986) (holding social hosts not liable for furnishing alcohol to competent, adult individuals). In *Raysinger*, the court reasoned that, “in the case of an ordinary able bodied man it is the consumption of the alcohol, rather than the furnishing of the alcohol, which is the proximate cause of any subsequent occurrence.” *Raysinger*, 470 A.2d at 510-11.

217. *Willis v. Omar*, 954 A.2d 126, 130 (R.I. 2008).

218. *Martin v. Marciano*, 871 A.2d 911, 915 (R.I. 2005) (citing *Luoni v. Berube*, 729 N.E.2d 1108, 1111 (Mass. 2000)).

219. 871 A.2d 911 (R.I. 2005).

220. *Id.* at 914 (noting plaintiff was struck in head with baseball bat).

fellow guests or third persons because it was generally foreseeable that an underage guest could have been the victim of an attack while at the party.²²¹ Although supplying underage guests with alcohol may trigger a special relationship, providing alcohol to an adult guest does not.²²² Furthermore, even if a social host unlawfully serves alcohol to a minor guest, “this act alone is insufficient to trigger a special relationship, if the resultant risk of injury is not foreseeable.”²²³

40. South Carolina

In *Marcum v. Bowden*,²²⁴ the Supreme Court of South Carolina amended the common-law rule shielding social hosts from liability and held that social hosts who furnish alcohol to persons under the legal drinking age “are liable to the person served, and to any other person, for damages proximately caused by the [social] host’s service of alcohol.”²²⁵ Despite the existence of liquor control statutes, the court recognized this new cause of action under the common law, rather than under the doctrine of negligence per se.²²⁶

41. South Dakota

In South Dakota, the legislature has enacted an anti-dram shop statute codifying the common-law rule of nonliability for social hosts.²²⁷ The statute provides that “the consumption of alcoholic beverages, rather than the serving of alcoholic beverages, is the proximate cause of any injury inflicted upon another by an intoxicated person.”²²⁸ Section 35-11-2, which deals specifically with the liabilities of social hosts, states, “No social host who furnishes any

221. *Id.* at 915-17.

222. *Willis*, 954 A.2d at 130 (acknowledging social host liability exists in limited circumstances).

223. *Willis v. Omar*, 954 A.2d 126, 130 (R.I. 2008).

224. 643 S.E.2d 85 (S.C. 2007).

225. *Id.* at 90 (stating court’s holding).

226. *Id.* at 88-90 (stating amending common law falls within court’s purview). *But see* *Christiansen v. Campbell*, 328 S.E.2d 351, 354 (S.C. Ct. App. 1985) (holding violation of statute prohibiting sale of alcohol to visibly intoxicated person negligence per se), *overruled in part by* *Tobias v. Sports Club, Inc.*, 504 S.E.2d 318 (S.C. 1998) (refusing to recognize claim by injured intoxicated patron against tavern under negligence per se doctrine). The court in *Tobias* only overruled the holding in *Campbell* to the extent that the intoxicated injured adult imbiber does not have a claim against the tavern owner under the doctrine of negligence per se for a violation of a state statute prohibiting the sale of alcohol to a visibly intoxicated adult. *Tobias*, 504 S.E.2d at 319. The court, however, specifically retained the holding in *Campbell* that permits an injured third party to file a claim against the tavern owner. *See id.* In *Marcum*, the court elected to find this duty under the common law, rather than under the doctrine of negligence per se, because, in its view, the statutes prohibiting the furnishing of alcohol to persons under the age of twenty-one were designed to protect only the person under twenty-one who consumes the alcohol. *Marcum*, 643 S.E.2d at 89. If the court were to impose liability under the doctrine of negligence per se, the social host would be liable only to the underage drinker and not to any injured third party. *Id.* The court held that such an outcome would contravene the public policy of South Carolina. *Id.*

227. *See* S.D. CODIFIED LAWS § 35-11-1 (2004); *Id.* § 35-11-2 (Supp. 2008).

228. *Id.* § 35-11-1.

alcoholic beverage is civilly liable to any injured person . . . for any injury suffered.”²²⁹

42. Tennessee

The Tennessee legislature has declared that “the consumption of any alcoholic beverage or beer rather than the furnishing of any alcoholic beverage or beer is the proximate cause of injuries inflicted upon another by an intoxicated person.”²³⁰ Accordingly, a social host may not be held liable as a matter of law for furnishing alcohol to another person, even if that person is under the legal drinking age.²³¹ Tennessee courts, however, have held that a defendant has an affirmative duty to protect another from harm if a special relationship exists between the defendant and the person who is either the source of danger or the person who is at risk.²³² In *Biscan v. Brown*,²³³ the Tennessee Supreme Court held that a social host who knowingly permitted and facilitated the consumption of alcohol by minors had a special relationship with his minor guests, and therefore, had a duty to exercise reasonable care to prevent his minor guests from harming third persons or themselves.²³⁴ In so holding, the court reached an interesting result whereby a social host who actively furnishes alcohol to underage guests is exempt from liability for any resulting injuries, but a social host who merely provides the setting for underage drinking may be held liable for any resulting injuries to third parties and to the minor drinkers themselves.²³⁵

43. Texas

Texas courts do not recognize any form of social host liability.²³⁶ On several occasions, the courts have refused to amend the common-law rule shielding social hosts from liability because of legislative action in the field of

229. *Id.* § 35-11-2.

230. TENN. CODE ANN. § 57-10-101 (2002).

231. *Biscan v. Brown*, 160 S.W.3d 462, 472 (Tenn. 2005).

232. *Id.* at 478-79.

233. 160 S.W.3d 462 (Tenn. 2005).

234. *Id.* at 482. The court based its finding of a special relationship on the public policy determination that minors are generally prohibited from consuming alcohol because of their immaturity and inexperience. *Id.* at 480-81. The court further reasoned that, “[a]s it was foreseeable that guests would drink and drive, it was also entirely foreseeable that guests would ride with drivers who had been drinking. We conclude that the foreseeability factor also supports finding that [the defendant social host] had a special relationship to his minor guests.” *Id.* at 481.

235. *See id.* at 482 (rationalizing discrepancy that duty owed by social host lies separate from furnishing alcohol to minors).

236. *See, e.g.,* *Reeder v. Daniel*, 61 S.W.3d 359, 360-61 (Tex. 2001) (refusing to recognize cause of action against social host for making alcohol available to persons under eighteen); *Smith v. Merritt*, 940 S.W.2d 602, 607 (Tex. 1997) (refusing to recognize claim against social host for serving alcohol to persons over age eighteen); *Graff v. Beard*, 858 S.W.2d 918, 918 (Tex. 1993) (refusing to recognize claim against social host who makes alcohol available to adult guest).

liquor liability.²³⁷ Texas courts have likewise refused to recognize social host liability under the doctrine of negligence per se.²³⁸

44. Utah

Utah courts do not recognize social host liability under the common law.²³⁹ The Utah legislature, however, has adopted legislation that creates a cause of action against a social host who negligently serves alcohol to a person under twenty-one years of age in favor of a third party injured as a result of the social host's service of alcohol.²⁴⁰ Under the statute, only third parties may bring a cause of action against the social host.²⁴¹ The imbiber has no remedy for injuries sustained as a result of his own voluntary intoxication.²⁴²

45. Vermont

Under the Vermont dram shop statute, a social host generally may not be held liable for furnishing alcohol to another person.²⁴³ Nevertheless, "[a] social host who knowingly furnishes intoxicating liquor to a minor may be held liable . . . if the social host knew, or a reasonable person in the same circumstances would have known, that the person who received the intoxicating liquor was a minor."²⁴⁴ Third parties injured by an intoxicated minor may bring a cause of action against the social host who served the minor.²⁴⁵ Under the statute, a minor may not recover from the social host who served him for injuries sustained as a result of his own voluntary

237. See *Graff*, 858 S.W.2d at 919 (noting dram shop statute only applies to commercial providers); see also TEX. ALCO. BEV. CODE ANN. §§ 2.01-.03 (West 2007) (imposing limited liability upon commercial vendors). When the legislature debated the dram shop bill, it specifically considered creating social host liability, but declined to do so. *Graff*, 858 S.W.2d at 919. In light of the legislature's decision not to adopt social host liability, Texas courts have reasoned that judicial recognition would be inappropriate because it would undermine the clear intent of the legislature. See *Merritt*, 940 S.W.2d at 607 (refusing to circumvent legislative intent).

238. *Merritt*, 940 S.W.2d at 608. In *Merritt*, the court refused to recognize as negligence per se the violation of a statute prohibiting the furnishing of alcohol to a person under the legal drinking age. See *id.* The court reasoned that the legislature intended the dram shop statute to provide the exclusive means of civil liability for serving alcohol to persons under the legal drinking age. *Id.* Recognition of negligence per se in this instance would circumvent the intent of the legislature, which had specifically decided not to create a cause of action against social hosts. *Id.*

239. See *Gilger v. Hernandez*, 997 P.2d 305, 307-08 (Utah 2000) (noting liability precluded under common law for social hosts who serve alcohol to minors); *Miller v. Gastronomy, Inc.*, 110 P.3d 144, 147 (Utah Ct. App. 2005) (observing no third-party cause of action against dram shop exists at common law).

240. UTAH CODE ANN. § 32A-14a-102 (LexisNexis Supp. 2010).

241. *Horton v. Royal Order of Sun*, 821 P.2d 1167, 1169 (Utah 1991) (discussing legislative enactment of third-party cause of action).

242. *Id.* (noting imbiber precluded from bringing cause of action against social host).

243. VT. STAT. ANN. tit. 7, § 501(g)(1) (2005).

244. *Id.* § 501(g)(2). A minor is defined as a person under the age of twenty-one. *Id.* § 2(26).

245. *Langle v. Kurkul*, 510 A.2d 1301, 1303 (Vt. 1986) (stating Dram Shop Act provides no remedy to self-injured imbiber, only to injured third parties).

intoxication.²⁴⁶ The dram shop statute does not preclude an injured third party from bringing a negligence cause of action against a social host under the common law.²⁴⁷ The Supreme Court of Vermont indicated in dicta that it would recognize a common-law cause of action against a social host “(a) where the social host furnishes alcoholic beverages to one who is visibly intoxicated and it is foreseeable to the host that the guest will thereafter drive an automobile, or (b) where the social host furnishes alcoholic beverages to a minor.”²⁴⁸

46. Virginia

Virginia courts do not recognize a cause of action against a social host for injuries resulting from the negligent provision of alcohol to a guest.²⁴⁹ This rule applies even when the recipient of the alcohol is under the age of eighteen.²⁵⁰ In *Teape v. Ampuero*,²⁵¹ the court addressed whether a person injured in a car accident with a seventeen-year-old intoxicated social guest could sue the social host who served alcohol to the minor driver.²⁵² The court answered the inquiry in the negative, observing that “Virginia law assumes adults will act as a reasonably prudent person would. This presumption of reasonably prudent conduct is an essential component of the Court’s rulings that serving alcohol is not the proximate cause of the drinker’s future injurious actions.”²⁵³ The court reasoned that minors engaged in adult activities are held to the same standard of care as adults.²⁵⁴ Therefore, social hosts can assume that minor guests will exercise the same degree of caution when driving as would adult guests.²⁵⁵ The court reasoned that social hosts should not be held to a higher standard of care when their guests are under the age of eighteen because, as a matter of law, future injurious acts of minor drinkers are not more foreseeable than those of adult drinkers.²⁵⁶

246. *Id.* (holding Dram Shop Act provides no remedy to imbiber against social host).

247. *Id.* (rejecting notion that dram shop law preempts common-law remedy).

248. *Id.* at 1306.

249. *See Teape v. Ampuero*, 73 Va. Cir. 7, 8-9 (2006) (noting Virginia Supreme Court has refused to judicially adopt social host liability). The rationale for nonliability is that social guests are responsible for their own actions because the consumption of alcohol, not its dissemination, is the proximate cause of the injury. *Id.* (citing *Williamson v. Old Brogue, Inc.*, 350 S.E.2d 621, 623 (Va. 1986) (stating persons, drunk or sober, are responsible for own conduct)).

250. *Id.* at 9 (noting minors engaged in adult activities are held to same standard as adults).

251. 73 Va. Cir. 7 (2006).

252. *Id.* at 7-8.

253. *Id.* at 9.

254. *Id.* (stating driving car is adult activity). *But see* RESTATEMENT (SECOND) OF TORTS § 283A (1965) (stating children held to standard of reasonable, similarly situated child in negligence actions).

255. *Teape*, 73 Va. Cir. 7, at 9.

256. *See id.* at 9-10 (refusing to overturn precedent regarding foreseeability of injurious acts of infants).

47. Washington

In Washington, a social host generally owes no duty to prevent overconsumption of alcohol by an adult guest even if the guest is visibly intoxicated.²⁵⁷ In *Hansen v. Friend*,²⁵⁸ however, the Washington Supreme Court held that a social host who furnishes alcohol to a minor may be held liable to that person for injuries sustained as a result of his voluntary intoxication.²⁵⁹ Notably, in *Reynolds v. Hicks*,²⁶⁰ the Washington Supreme Court refused to extend the ruling in *Hansen* to recognize a cause of action in favor of an injured third party.²⁶¹

48. West Virginia

West Virginia courts recognize a cause of action based upon the *Restatement (Second) of Torts* section 321, which provides, “One who engages in affirmative conduct, and thereafter realizes or should realize that such conduct has created an unreasonable risk of harm to another, is under a duty to exercise reasonable care to prevent the threatened harm.”²⁶² Under the principles of section 321, a social host who furnishes alcohol or narcotics to a guest may not be held liable to innocent third parties injured as a result of the guest’s intoxication unless the social host forced or actively encouraged the guest to imbibe.²⁶³

49. Wisconsin

In Wisconsin, the legislature has enacted a statute under which a social host may be held liable for injuries sustained by a third party that result from the host’s negligent provision of alcohol to a person under the legal drinking age.²⁶⁴ The statute creates a cause of action in favor of injured third parties

257. See *Burkhart v. Harrod*, 755 P.2d 759, 763-64 (Wash. 1988) (en banc) (declining to hold social hosts to same standard common law requires of commercial hosts).

258. 824 P.2d 483 (Wash. 1992) (en banc).

259. *Id.* at 485-86. The court concluded that a state law making it unlawful to provide alcohol to a person under twenty-one years of age imposes a duty upon social hosts to refrain from serving alcohol to minors. *Id.* (noting contributory negligence must also be considered).

260. 951 P.2d 761 (Wash. 1998) (en banc).

261. *Id.* at 764. The court reasoned that the statute making it unlawful to furnish alcohol to a person under twenty-one years of age was intended to protect minors only. *Id.* The court concluded that third parties are not within the class of persons the statute was enacted to protect, and therefore, are owed no duty by social hosts. *Id.* (stating, however, third party claims would be recognized against commercial vendors).

262. *Robertson v. LeMaster*, 301 S.E.2d 563, 567 (W. Va. 1983); RESTATEMENT (SECOND) OF TORTS § 321 (1965).

263. See *Overbaugh v. McCutcheon*, 396 S.E.2d 153, 158 (W. Va. 1990).

264. See WIS. STAT. ANN. § 125.035 (West 2009). The statute begins by codifying the common-law rule that “[a] person is immune from civil liability arising out of the act of procuring alcohol beverages for or selling, dispensing or giving away alcohol beverages to another person.” *Id.* § 125.035(2). The statute, however, carves out an exception to the common-law rule, thus making a social host liable, in the event that the social host “knew or should have known that the underage person was under the legal drinking age and if the

only.²⁶⁵

50. Wyoming

The Wyoming legislature has adopted a statute, which provides: “No person who has legally provided alcoholic liquor or malt beverage to any other person is liable for damages caused by the intoxication of the other person.”²⁶⁶ In Wyoming, it is illegal for any person to sell, furnish, or give alcohol to any person under twenty-one-years-old who is not his legal ward, medical patient, or immediate family member.²⁶⁷ Therefore, where alcohol is illegally provided to a minor, the person providing the alcohol may become liable for injuries resulting from that minor’s intoxication.²⁶⁸ In *Daniels v. Carpenter*,²⁶⁹ the Supreme Court of Wyoming held that social hosts who illegally provide alcohol to underage persons may be liable to injured third parties under certain circumstances.²⁷⁰ The court has yet to consider whether a minor guest may recover for injuries sustained as a result of his own voluntary intoxication.²⁷¹

III. ANALYSIS

A. *The Traditional Proximate Cause Rationale for Shielding Social Hosts is Flawed*

The traditional rationale for exempting social hosts from liability for the negligent distribution of alcohol to their guests was the lack of proximate causation.²⁷² At common law, the actual consumption of alcohol, rather than its dissemination, is considered to be the sole proximate cause of injuries

alcohol beverages provided to the underage person were a substantial factor in causing injury to a 3rd party.” *Id.* § 125.035(4)(b).

265. *Id.* § 125.035(4)(b).

266. WYO. STAT. ANN. § 12-8-301(a) (2009).

267. *Id.* § 12-6-101(a) (Supp. 2010).

268. *Daniels v. Carpenter*, 62 P.3d 555, 563 (Wyo. 2003) (holding social hosts who illegally provide alcohol to underage persons liable to injured third parties).

269. 62 P.3d 555 (Wyo. 2003).

270. *Id.* at 563-64. The court laid out a list of factors that must be present in order for a social host to be found liable to a third party injured by an intoxicated underage guest. *Id.* at 564. First, the social host must have provided the alcohol to the minor guest or knew or should have known that alcohol was being provided to the minor guest. *Id.* Second, the social host must have known or should have known that the minor guest was drinking to the point of intoxication. *Id.* Third, the social host must have known or should have known that the minor guest would soon be driving an automobile. *Id.* The court concluded that the mere failure of a social host to supervise minor guests does not by itself create a duty to protect third parties from harm caused by an intoxicated minor driver. *Id.*

271. *See id.* at 563-64 (declining to define all circumstances under which common-law claim for social host liability exists).

272. *See supra* note 20 and accompanying text (explaining common-law rationale for exempting licensed vendors and social hosts from civil liability).

caused to either the recipient or third persons.²⁷³ Although this determination may have made sense centuries ago when horses provided the primary means of terrestrial transportation, the same can no longer be said of today's automotive era.²⁷⁴

Proximate causation is said to exist when the injury caused is within the scope of foreseeable risk created by the defendant's negligence.²⁷⁵ It is plausible to suggest that operating a horse-drawn carriage while intoxicated does not create a foreseeable risk of harm to the public.²⁷⁶ Indeed, that was the opinion of the learned scholars who wrote the common law.²⁷⁷ To suggest, however, that the dangers presented to the public by the operation of an automobile while intoxicated are not foreseeable would be naïve at best.²⁷⁸

Unlike the horse and buggy, automobiles are extremely fast, massive, and require a high level of attention and dexterity to operate safely.²⁷⁹ Automobiles are easily capable of causing mass death and destruction when mishandled.²⁸⁰ Driving while intoxicated amplifies this danger because an intoxicated driver's motor functions and reaction times are significantly impaired, making the task of safely operating an automobile nearly impossible.²⁸¹

In recent years, society has come to appreciate the dangers of drunk driving.²⁸² It is only proper, then, that the common law adapt to reflect society's evolving concerns.²⁸³ Therefore, in light of the dangers posed by automotive travel and the fact that automobiles are heavily used, it should be clear that providing an intoxicant to a social guest may create a reasonably foreseeable risk of harm to both the recipient and third persons in certain

273. See *supra* note 20 and accompanying text (reiterating rule of responsibility placed on person voluntarily drinking).

274. See *supra* note 22 and accompanying text (recognizing common-law rule outdated with respect to modern transportation technology).

275. See DOBBS ET AL., *supra* note 14, at 186 (formulating scope of risk principle with respect to proximate causation).

276. See *supra* note 22 and accompanying text (noting common-law rule satisfactory during horse-and-buggy era).

277. See *supra* note 22 and accompanying text (discussing former status of common law regarding vehicular liability).

278. See *Kelly v. Gwinnett*, 476 A.2d 1219, 1222 n.3 (N.J. 1984) (detailing injuries and fatalities related to drunk driving in New Jersey over four-year period), *superseded by statute*, 1987 N.J. Laws 1804. "From 1978 to 1982 there were 5,755 highway fatalities in New Jersey. Alcohol was involved in 2,746 or 47.5% of these deaths. Of the 629,118 automobile accident injuries for the same period, 131,160, or 20.5% were alcohol related." *Id.*

279. See *Craig v. Driscoll*, 813 A.2d 1003, 1020 (Conn. 2003) (noting "quick response of mind and muscle" necessary to safely operate automobile).

280. *Id.* (noting automobiles "capable of producing mass death and destruction").

281. See *supra* note 22 and accompanying text (emphasizing danger associated with drunk driving).

282. See *supra* note 23 and accompanying text (noting society's growing concern regarding dangers of drunk driving).

283. See *supra* note 36 and accompanying text (arguing common law must adapt to fit society's changing concerns).

circumstances.²⁸⁴ In other words, the provision of an intoxicant to a social guest should, under the right circumstances, constitute the proximate cause of any resulting injuries.²⁸⁵

B. A Reasonable Standard of Care for Social Hosts

Even if one embraces the notion that the negligent distribution of alcohol may be a proximate cause of resulting injuries, in order to properly define the liabilities of social hosts, it is necessary to define the duty social hosts owe to their guests.²⁸⁶ Social hosts should owe their guests and the general public a duty of reasonable care in all circumstances, regardless of the guests' age or state of intoxication.²⁸⁷ By holding social hosts to the traditional "reasonable person" standard, an equitable balance is struck whereby irresponsible conduct is deterred without hindering the enjoyment of social gatherings.²⁸⁸ This Note will now explore the implications that this standard will have on the liability of social hosts in the context of visibly intoxicated persons, persons under the legal drinking age, and narcotics distribution.²⁸⁹

1. Visibly Intoxicated Persons

A social host should be liable to an innocent third person injured by an intoxicated guest when the host knew or should have known that the guest was visibly intoxicated and intended to drive, but furnished alcohol to the guest nonetheless.²⁹⁰ Such a standard is appropriate because serving alcohol to a visibly intoxicated guest is unreasonable and presents a foreseeable risk of harm to the public, especially in today's era of automobiles.²⁹¹ A social host

284. *Nehring v. LaCounte*, 712 P.2d 1329, 1334 (Mont. 1986) (observing unreasonable risk of harm more likely under present day conditions than in past), *superseded by statute*, Dram Shop Act, 1986 Mont. Spec. Sess. Laws, ch. 1, § 1, *as recognized in* *Rohlfs v. Klemenhausen, LLC*, 227 P.3d 42 (Mont. 2009).

285. *See id.* at 1335 (denouncing common-law causation rule regarding liability of social host). In *Nehring*, the court addressed the common-law rule that the drinking of the intoxicating beverage, not the furnishing thereof, is the proximate cause of any subsequent injuries. *Id.* In light of the unreasonable risk of harm posed by drunk driving, the court explicitly rejected this dated common-law principle, branding it a "Neanderthal approach to causation." *Id.*

286. *See supra* notes 15-16 and accompanying text (noting breach of recognized legal duty as element of negligence cause of action).

287. *See Pike v. Bugbee*, 974 A.2d 743, 750-51 (Conn. App. Ct. 2009) (implying service of alcohol to minor is breach of duty of reasonable care); *Hart v. Ivey*, 420 S.E.2d 174, 178 (N.C. 1992) (holding provision of alcohol to intoxicated person breach of duty of reasonable care to public); *Bash v. Book*, No. WOCV2006-00745-A, slip op. at 5 (Mass. Super. Ct. Oct. 20, 2009) (suggesting social hosts owe duty of reasonable care to guests).

288. *See infra* Parts III.B.1-3 and accompanying text (analyzing implications of reasonable person standard).

289. *See infra* Parts III.B.1-3 and accompanying text (examining liabilities of social hosts when held to standard of reasonable care).

290. *Kelly v. Gwinnell*, 476 A.2d 1219, 1224 (N.J. 1984) (holding social hosts who serve visibly intoxicated guests liable to injured third parties), *superseded by statute*, 1987 N.J. Laws 1804.

291. *See Smith v. Winn-Dixie Charlotte, Inc.*, 542 S.E.2d 288, 293-94 & n.6 (N.C. Ct. App. 2001)

should also be liable to an intoxicated guest for injuries resulting from the guest's own voluntary intoxication.²⁹² By voluntarily consuming the alcohol, however, the recipient may be equally, if not more, at fault than the host who served him.²⁹³ Depending on the comparative fault rules of the jurisdiction, the injured imbiber's recovery may be significantly reduced or even barred due to his own negligent conduct of voluntarily drinking in excess.²⁹⁴ Despite the prospects of recovery, an injured imbiber should not be categorically barred from bringing a negligence action against the social host who served him, because serving alcohol to a visibly intoxicated person is a breach of the duty of reasonable care.²⁹⁵

2. Underage Drinkers

A social host who serves alcohol to a person under the legal drinking age should be liable to both the underage drinker and innocent third persons for any injuries sustained.²⁹⁶ This fairly expansive liability is reasonable in light of the fact that providing alcohol to an underage person creates a foreseeable risk of harm to both the underage drinker and to the general public.²⁹⁷ While possibly negligent himself for voluntarily ingesting the alcohol, an underage drinker is distinguishable from a person of legal drinking age in that an underage drinker is less likely to be able to exert the self-control necessary to refrain from excessive drinking in a social setting.²⁹⁸ Underage drinkers are presumably less experienced at drinking alcohol, and therefore, are in a worse position to judge the rate and intensity of their intoxication.²⁹⁹ For these reasons, in a comparative fault jurisdiction, an inexperienced underage drinker may have a

(recognizing unreasonableness of furnishing alcohol to visibly intoxicated person about to drive vehicle). In *Smith*, the court observed that social hosts have a duty to exercise the same degree of care that a reasonably prudent person would exercise under similar conditions. *Id.* at 292. The court held that a social host who furnishes alcoholic beverages to a visibly intoxicated person who intends to drive a motor vehicle breaches his duty of reasonable care. *Id.* at 292-93.

292. See *supra* Part II.C.14 (describing Indiana law recognizing injured imbiber's claim where host has knowledge of guest's visible intoxication).

293. See *Weinert*, *supra* note 27, at 872 (recognizing lesser blameworthiness of host as reason to deny injured imbiber right to recover from host).

294. See *DOBBS ET AL.*, *supra* note 14, at 221-23 (discussing comparative fault principles).

295. See *supra* notes 290-91 (citing cases where provision of alcohol to visibly intoxicated guest breached duty of reasonable care).

296. See *supra* Part II.C.7 (analyzing Connecticut law recognizing claim by injured minor imbiber and third parties against social host).

297. See *supra* Part II.C.3 (explaining provision of alcohol to minor breaches duty of reasonable care in Arizona).

298. See *Bohan v. Last*, 674 A.2d 839, 842-43 (Conn. 1996) (noting minors overall less blameworthy than adults for overconsumption of alcohol). In *Bohan*, the court listed two reasons for holding social hosts liable to both injured minor guests and third persons. *Id.* First, the court noted that minors are assigned a lesser degree of responsibility regarding their decision to consume alcohol. *Id.* Second, the court observed that minors are generally incompetent to responsibly handle the effects of alcohol. *Id.* at 843.

299. See *id.* at 842-43.

better chance at recovering for his injuries than would a person of legal drinking age.³⁰⁰

3. Narcotics

A social host who provides alcohol to a sober guest of legal drinking age should not be liable for any injuries resulting from the guest's subsequent intoxication because providing alcohol to a competent adult is not unreasonable.³⁰¹ Where a social host distributes not alcohol, but narcotics to his guests, the reasonableness analysis changes.³⁰² Narcotics, unlike alcohol, are illegal.³⁰³ Therefore, it is presumably a breach of the duty of reasonable care to provide someone with a narcotic.³⁰⁴ This is certainly true in jurisdictions that recognize the doctrine of negligence per se.³⁰⁵ In jurisdictions that do not recognize the doctrine, the question of reasonableness hinges upon a traditional duty-risk analysis.³⁰⁶ There exist many types of narcotics, which vary in potency and risk to human life.³⁰⁷ Presumably, it would be less reasonable to distribute to a social guest heroin, which the federal government has classified as one of the most dangerous illegal drugs, than marijuana, which the federal government has classified as one of the least dangerous.³⁰⁸ It is up

300. See DOBBS ET AL., *supra* note 14, at 221-23 (discussing comparative fault principles); see also RESTATEMENT (SECOND) OF TORTS § 283A (1965) (defining standard applied to children in negligence actions). "IF THE ACTOR IS A CHILD, THE STANDARD OF CONDUCT TO WHICH HE MUST CONFORM TO AVOID BEING NEGLIGENT IS THAT OF A REASONABLE PERSON OF LIKE AGE, INTELLIGENCE, AND EXPERIENCE UNDER LIKE CIRCUMSTANCES." RESTATEMENT (SECOND) OF TORTS § 283A. BUT SEE *Teape v. Ampuero*, 73 Va. Cir. 7, 9 (2006) (observing under Virginia law minors engaging in adult activity held to same standard as adults).

301. See *Bash v. Book*, No. WOCV2006-00745-A, slip op. at 4 (Mass. Super. Ct. Oct. 20, 2009) (asserting provision of alcohol to adult guest does not create foreseeable risk of harm); *Morrison v. Fleck*, 697 N.E.2d 1064, 1071 (Ohio Ct. App. 1997) (denying social host liability for provision of alcohol to adults); *Graff v. Beard*, 858 S.W.2d 918, 918 (Tex. 1993) (refusing to recognize claim against social host who makes alcohol available to adult guest); *supra* note 6 (discussing holding in *Bash*).

302. See *Bash*, No. WOCV2006-00745-A, slip op. at 4-5 (holding distribution of heroin to be breach of duty of reasonable care).

303. *Id.* (noting illegality of heroin as factor in determining distribution unreasonable).

304. *Id.*; see also *Commonwealth v. Catalina*, 556 N.E.2d 973, 979-80 (Mass. 1990) (holding distribution of heroin wanton and reckless conduct). In *Catalina*, the defendant was indicted for involuntary manslaughter for distributing a potent dose of heroin to a woman, who subsequently died of an overdose. *Catalina*, 556 N.E.2d at 975. The defendant asserted that his alleged conduct was insufficient to justify an indictment for involuntary manslaughter. *Id.* In Massachusetts, involuntary manslaughter includes an unlawful homicide unintentionally caused by wanton or reckless conduct. *Id.* at 979. Considering the strong public policy against heroin use, the inherent dangerousness of the drug, and the high probability that death would result from its ingestion, the court held that the grand jury was warranted in indicting the defendant for the crime of involuntary manslaughter. *Id.* at 980.

305. See *supra* note 37 (defining negligence per se).

306. See *Cook v. Kendrick*, 931 So. 2d 420, 427 (La. Ct. App. 2006) (applying duty-risk analysis to determine social host's liability for furnishing narcotics); *supra* note 138 (discussing court's reasoning in *Cook*).

307. See 21 U.S.C. § 812 (2006) (classifying narcotics); UNIFORM CONTROLLED SUBSTANCES ACT (1994) §§ 204-212 (providing classification schedules of narcotics).

308. See 21 U.S.C. § 812 (2006).

to the judiciary in each jurisdiction to determine whether the distribution of a particular narcotic violates the duty of reasonable care based on each state's policies regarding the substance involved.³⁰⁹ If the provision of a particular narcotic does violate the duty of reasonable care by presenting a foreseeable risk of harm to the imbiber and the public, the provider of the narcotic should be liable for any resulting damages.³¹⁰ Even if a court recognizes the distribution of a particular narcotic as a breach of the duty of reasonable care, however, the consumer's negligence must also be taken into account under a comparative fault analysis in determining the liability of the social host.³¹¹

IV. CONCLUSION

By imposing a duty of reasonable care upon social hosts, an equitable balance is achieved whereby risky behavior is deterred without hindering the enjoyment of social gatherings. In this way, society is best served. Under this standard, social hosts are not liable to their guests or to third parties for injuries arising out of the provision of alcohol unless they knew or should have known that the person they were serving was visibly intoxicated or under the legal drinking age. This proposed rule serves the interests of both the public and social hosts by exposing social hosts to liability only when their conduct is unreasonable in light of public policy. Finally, under the proposed standard, an injured consumer of narcotics should not be barred from bringing a negligence action against the furnisher of the narcotics, provided the jurisdiction considers the distribution of the narcotic at issue to be unreasonable conduct. Such a result supports the strong public policy against the distribution of narcotics.

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309. See *Bash v. Book*, No. WOCV2006-00745-A, slip op. at 5 (Mass. Super. Ct. Oct. 20, 2009) (finding provision of heroin to be breach of duty of reasonable care).

310. See *id.* (refusing to grant summary judgment motion in wrongful death suit against provider of heroin); see also *Commonwealth v. Catalina*, 556 N.E.2d 973, 979-80 (Mass. 1990) (holding distribution of heroin wanton and reckless conduct).

311. See *DOBBS ET AL.*, *supra* note 14, at 221-23 (discussing comparative fault principles).

Preventing Underage Drinking

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7. Social Host Liability Laws

Research Summary on Social Host Liability Laws:

Social host liability laws state that adults who provide alcohol to minors or those who are obviously intoxicated can be held legally liable if the person is killed or injured, or kills or injures another person.

Social host liability laws have research evidence showing they are effective. In one analysis of all 50 states, social host laws were associated with reductions in heavy drinking as well as drinking and driving (Stout, Sloan, Liang, & Davies, 2000). In another study, these laws were related to decreases in adult alcohol-related traffic deaths across all states for the years 1984-1995 (Whetten-Goldstein, 2000). In addition to the specific research evidence, these laws are based on good theory. Youth often get alcohol at home or from those over 21

who purchase it for them. Social host liability laws may prevent parents and other adults from hosting parties and providing alcohol for underage youth by educating them about the law, sending a message that it is illegal, and providing a significant consequence (i.e. being arrested).

In some states, social host liability is covered under dram shop law. Dram shop liability refers to a drinking establishment's potential financial liability for serving alcohol to an intoxicated or underage person who later causes injury to a third party. However, dram shop law usually only covers commercial service and not individuals. Social host laws vary from state to state. Some state laws may only target those who provide to underage youth whereas others may also extend that to serving those who are intoxicated.

PLANNING

It is important to assess whether the state has a social host liability law. Currently 32 states have such laws. Mothers Against Drunk Driving maintains a current listing of these states at the following website: <http://www.madd.org/laws/>. (You can also track a total of 40 alcohol-related laws at this site.) Whether or not the state has a social host liability law will determine the course of action. If there are social host liability laws already in place, then assess the degree to which they are being enforced. If there is not an ordinance or law in place, mobilization will be needed to get a social host liability law or ordinance passed. This effort could target city, county, or state levels.

Provide a ready-made social host liability law or ordinance for lawmakers (See Sample Ordinance-- Social Host Liability Laws). Here are some issues to decide when drafting social host liability laws:

- **Who the law targets** - This has to do with whether the law covers adults who provide alcohol to those who are obviously intoxicated, underage youth, or both. Note: The more target groups covered by the law, the better the law is likely to be.
- **The degree of knowledge that “hosts” must have** - Some laws only hold those adults responsible who “knowingly” allow underage drinking parties in their home.

Build community support for this strategy from parent groups, law enforcement, and other community members. Focus public awareness activities in the community and highlight the relationship between easy access to alcohol and increased motor-vehicle crashes and fatalities. There should also be public awareness that when parents or other adults provide alcohol to youth, they are breaking the law and contributing to alcohol-related problems in their community.

The following are different media awareness and advocacy strategies that can be utilized:

- a) Contact a local representative to convince him or her that enacting social host liability laws is a good idea.
- b) Hold individual meetings with those who are in key positions to affect change (e.g., elected officials, community coalitions, law enforcement) and other institutions that are responsible for establishing, maintaining, and enforcing social host liability ordinances.
- c) Inform parents and merchants about the purpose of the social host liability laws and how they can protect youth and the community from alcohol-related problems. Remind merchants that alcohol promotions can lead patrons to drink large amounts of alcohol and, if there is a dram shop law, the establishment could be liable for any damages intoxicated patrons may cause. Also, if there are happy hour restrictions in place, the message could focus on enforcement and the penalties for violating these restrictions.
- d) Hold a press conference describing the data collected about the number of alcohol-related problems that occur in the community. Discuss how implementing social host laws can reduce these alcohol-related problems.
- e) Work with local media outlets to air PSAs describing the problems caused by adults providing alcohol to minors and how social host liability laws can help reduce these problems including underage drinking and driving.
- f) Write letters to the editor about the problems caused by adults providing alcohol to minors and how social host liability laws can help.
- g) Try to get media coverage of the problem. Stage a rally or an event in or near an area where there are, or have been, a large number of parent-hosted parties

where alcohol is available (e.g., during prom or graduation times).

h) Issue press releases highlighting key activities and important events such as public hearings on social host laws.

i) Write an “Op-Ed” piece. See FACE (www.faceproject.org) for a sample Op-Ed piece and instructions.

j) Ensure that the coalition members are available to be interviewed and educate all members about the data on underage drinking and how adults providing alcohol to minors contribute to this problem.

Arguments for Social Host Liability laws that can be used in the media awareness and advocacy:

- Many youth get alcohol from older adults (e.g., siblings, parents) and from homes (e.g., parties). Social host liability laws try to prevent this by encouraging adults to think twice before purchasing kegs and allowing underage youth to drink in their homes.
- Many parents feel that, by hosting parties in their home, they are keeping their youth safe; however, significant problems can still arise at these parties (e.g., a youth leaves a party drunk and starts driving, sexual assaults, alcohol poisoning, etc.).
- Youth who gain experience with alcohol at these parties may continue to use alcohol in other locations away from parental supervision.
- Adults who illegally provide alcohol to underage youth may be deterred only if they believe they will face legal or financial consequences for providing alcohol to those under 21.

Tools for Planning, Implementation and Evaluation:

In this example, there are several tools that can be customized and utilized in the community to help plan, implement, and evaluate social host liability laws.

- Social Host Liability Laws Planning Tool
- Social Host Liability Laws Implementation Tool
- Social Host Liability Outcome Evaluation Tool (Appendix N)
- Sample Ordinance—Social Host Liability Laws

Social Host Liability Laws Planning Tool

The Social Host Liability Laws Planning Tool helps plan the primary component to this strategy: media awareness and advocacy to promote the passage and enforcement of social host liability laws.

Identifying Anticipated Outputs. Outputs are the direct products of the strategy’s components and usually are measured in terms of work accomplished (e.g., number of meetings with lawmakers, number of merchants visited to gain support, etc.). Outputs indicate whether the strategy is going in the direction that was intended. The Social Host Liability Laws Planning Tool already has several anticipated outputs listed that will be important to track. It may be necessary to add others.

Planning Each Component. Document the major activities that need to be completed in order to be successful in imple-

menting the media awareness and advocacy efforts. It is important to list each of these activities since this is where detailed action steps will occur. We have specified activities that are useful in planning the media awareness and advocacy efforts.

For each activity, consider the important planning elements:

- *Scheduled dates.* When will the activities occur? By deciding upon the approximate dates for the completion of each activity, a timeline will emerge. Use these dates to assess if the proposed activities are being implemented in a timely fashion.
- *Who will be responsible?* Before implementation, decide who will be responsible for each activity. Will it be staff of the coalition, volunteers, members of community agencies?
- *Resources needed.* Consider what resources are needed for each activity. This may be financial resources as well as specific supplies. Do any materials need to be purchased? Will they be donated?
- *Location.* Determine where to hold the various activities.

Collaboration Partners. In this section, identify the collaborative partners and their roles in the effort. Collaboration, including the development of additional community partnerships, is an integral part of any media advocacy effort to promote the passage and enforcement of social host liability laws.

Implementation Barriers. Local laws and ordinances are difficult to change. It is helpful to forecast what the challenges or barriers might be and to generate possible solutions for them. The Social Host Liability Laws Planning Tool has prompts when considering the potential barriers and space to generate solutions to those barriers. There may be additional barriers encountered that the coalition should add to the Planning Tool. Although the solutions may not be currently known, the Planning Tool can be updated at any time.

PROCESS EVALUATION

A process evaluation assesses what activities were implemented, the quality of the implementation, and the strengths and weaknesses of the implementation. This information can help to strengthen and improve a strategy over time.

Social Host Liability Laws Implementation Tool

The Social Host Liability Laws Implementation Tool is designed to assess several aspects of implementation, including whether the media awareness and advocacy were implemented according to the plan. Information from the Social Host Liability Laws Planning Tool is transferred to the subsequent sections of the Social Host Liability Laws Implementation Tool. Although all parts of the Planning Tool should be referred to periodically, the Implementation Tool should be used all of the time. Information is most useful when recorded during or immediately after each activity. Otherwise, important information that could help improve the chances of achieving results might be overlooked or forgotten.

Monitoring Component Outputs

In this part of the Implementation Tool, dates of each proposed activity and their anticipated output (as stated in the Planning Tool) are recorded in the appropriate column. Later, after each activity is implemented, the actual outputs for each component are recorded. The anticipated output can be expressed as the %Output. This number represents a comparison of the anticipated outputs and actual outputs. Dividing the actual output by the anticipated output and multiplying that number by 100 produces the %Output.

$$\frac{\text{Actual}}{\text{Anticipated}} \times 100 = \% \text{Output}$$

For example, if 50 individual meetings with lawmakers were planned, use the Implementation Tool to record the number of meetings actually held. If only 30 meetings were held, the %Output would be 60% ($30/50 \times 100 = 60\%$). The Implementation Tool is designed to be flexible. The level of information recorded will vary depending on the particular environmental strategy. In some cases, it may be most efficient to record data on a day-by-day basis. In other cases, it may be most efficient to present data by summing up information over weeks or months.

Component. In this column, list the name of the component as stated in the Planning Tool. The main component, media advocacy to promote social host liability laws, is already completed.

Date. In the “date” column, describe the time period that the information in that row represents. As stated above, data may be aggregated across different time spans. The type of date(s) recorded here may vary.

Implemented as Planned? The third column asks for a consideration of how well the components were implemented. Rate the implementation as “high”, “medium”, or “low”. If the implementation of the activity was very close to or exactly like it was planned, the rating would be “high”. If, for whatever reason, major changes occurred during the implementation (e.g., certain barriers or practical considerations made it necessary to change the plan), a rating of “low” would be appropriate.

Anticipated Output(s). In the fourth column, place the anticipated output(s) that were listed in the Planning Tool.

Actual Output(s). The actual output(s) are listed in this column. If, for example, the coalition planned to meet with 50 lawmakers but only met with 30, 50 meetings would be the “anticipated output” and 30 meetings would be the “actual output”.

%Output Actual/Anticipated. Divide the actual output by the anticipated output and multiply by 100. Place that number in this column.

Progress, Problems, and Lessons Learned. Successes, challenges, barriers, changes to the media advocacy strategy, and

other lessons learned with regard to activities should be recorded in this column.

Planning Activities

The Implementation Tool monitors whether the tasks in the plan were completed in a timely fashion.

Components, Key Planning Activities, Dates Scheduled to Complete Activity. The specific component, the corresponding planning activity, and dates by which the activity was to be completed should be taken from the Planning Tool and reprinted here.

Actual Date of Completion. The date that the planning activity is actually completed should be entered here.

Progress, Problems, and Lessons Learned. Successes, challenges, barriers, changes to the media advocacy strategy and other lessons learned with regard to the completion of planning activities should be recorded under “Progress, Problems, and Lessons Learned”.

Collaboration Partners

In this part of the Implementation Tool, address the extent to which the media advocacy efforts to pass a social host liability law achieved the expected collaboration. There are three columns of information in this part:

Anticipated Partner/Anticipated Role. The anticipated partners are identified in the Planning Tool. Collaboration partners and their roles are copied into the anticipated partners and anticipated roles sections, respectively.

Actual Partner/Actual Role. In these columns, differences between the actual and anticipated partners and roles identified in the plan are documented. Agencies or organizations that became partners after the strategy was initiated or after the plan was submitted may be identified here. When an anticipated partner does not collaborate as expected, this should be documented here and explained in greater detail under “Progress, Problems, and Lessons Learned”.

Progress, Problems, and Lessons Learned. Successes, challenges, barriers, changes to the activities and other lessons learned with regard to the collaboration partners should be recorded under “Progress, Problems, and Lessons Learned”.

Progress, Problems, and Lessons Learned

For each part of the Implementation Tool, space is provided under “Progress, Problems, and Lessons Learned” to document the successes and challenges experienced during the implementation of the media advocacy efforts to promote social host liability laws. Documenting and reviewing the progress, problems, and lessons learned on a regular basis helps to track ways that the media advocacy plan might be adjusted to meet the needs of participants. Recording the successes and challenges is helpful for at least two reasons.

- Looking for barriers, obstacles, and challenges to the media advocacy plan allows for the opportunity to make improvements.
- Recording challenges and successes helps to avoid pitfalls in future implementation of the media advocacy efforts.

There are two issues to be considered in the “Progress, Problems, and Lessons Learned” section. The first has to do with specific aspects of what went well and not so well during implementation. The second involves thoughtful consideration of areas in need of attention. How often these questions are addressed will vary, but it is important to ask these questions frequently and to keep a written record of any changes that need to be made. For example, when doing media advocacy, evidence may indicate that the number of parents being informed about social host liability laws is much less than what was planned. As a result, it may be useful to reconsider some of the activities (e.g., which media outlets would best reach parents about the social host liability laws) and then to make necessary changes to ensure that a larger number of parents are encouraged not to provide alcohol to their underage youth.

Meeting Contact Form (Appendix M)

One-on-one meetings with key community stakeholders who have responsibility for enacting and/or enforcing social host liability laws are important aspects of the media advocacy efforts. It will be important to document decisions made during these meetings. Using the Meeting Contact Form, it is possible to track the name and contact information, attitude toward underage drinking and social host liability laws, goals and objectives for the meeting (and which were met), and follow-up actions that need to be taken.

Social Host Liability Laws Policy Journal

Patterned after the Policy Journal used in *Communities Mobilizing for Change on Alcohol* (CMCA; Wagenaar et al., 1999), the Policy Journal is designed to help track the coalition’s impact on the local laws and ordinances that govern social host liability. For example, it will be important to document when each of the following policies were enacted:

- Making it illegal for adults to provide alcohol to minors and hold them liable for any injuries or damages that may result.
- Making it illegal for adults to provide alcohol to anyone who is intoxicated and hold them liable for any injuries or damages that may result.

Each time any type of liability policy is enacted, write a brief summary of what the exact policy change is using the Social Host Liability Laws Policy Journal. Record the following:

- Date of journal entry.*
- Geographical area in question.* Is it an entire city? A neighborhood?
- Current law/ordinance/policy that governs liability.* Summarize the original law/ordinance/policy.

- What change was made?* What is the new law/ordinance/policy? It could be as simple as promises from law enforcement to step up enforcement of existing laws.
- What body/council made the change?* It could be the city council, state legislature, or the Department of Alcoholic Beverage Control (ABC).
- Date change goes into effect.*
- How did the coalition’s efforts lead to this change?* Summarize how the group’s actions caused the above changes.
- Comments.* Any narrative to further explain the change in law.

Over time, the information collected in this Policy Journal will be useful when looking at longer-term outcomes, such as rates of underage drinking arrests, and motor vehicle crashes involving alcohol.

OUTCOME EVALUATION

What should be measured?

Evaluation data showing the effectiveness of social host liability laws can come from many sources, including objective data (e.g., archival data) and subjective data (e.g., self-reported surveys). The following are examples of objective data that might be good outcomes to track as a result of the social host liability laws:

- Rates of youth DUI arrests
- Rates of alcohol-related crime
- Motor-vehicle crashes
- Alcohol-related injuries
- Youth fatalities in traffic accidents
- Rate of adults arrested for providing alcohol to youth
- Rates of adults arrested for violating social host liability laws

This type of data could be gathered from the state or local police department, the local health department, and the Mothers Against Drunk Driving organization. In addition, there is a web system called the Fatality Analysis Reporting System (FARS) organized by NHTSA (www-fars.nhtsa.dot.gov) that allows users to access crash data online. Its database can be queried to produce reports at the state, county, or city level.

Subjective data that could be collected from a survey (e.g., parents, youth) include:

- Attitudes toward social host liability laws
- Awareness of social host liability laws
- Support for social host liability laws
- Place of last drink on a DUI arrest form

SOCIAL HOST LIABILITY LAWS OUTCOME EVALUATION TOOL

It is important for communities to have various types of information about the strategies documented. The Outcome Evaluation Tool is designed to organize the following information:

- **Summary of the needs and resources assessments:** Briefly summarize the results of the needs and resources assessments.
- **The target group (including numbers):** Briefly state who the target population is (e.g., parents, policymakers, etc.) and how many were reached.
- **Desired Outcomes:** This information is available from the Accountability Question – Goals.
- **Measures used:** Document what measure(s) were chosen.
- **Design chosen:** Document which evaluation design was utilized.
- **Number of people who were measured in the evaluation:** How many completed the evaluation? (Skip this section if the only method was a review of archival data.)
- **Data analysis method:** How were the data analyzed?
- **Pre and Post scores and their differences (if applicable):** Calculate the post score minus pre score for each participant to obtain the “difference” score between the two. Then take an average of all those “difference” scores.
- **Interpretation of the results:** What interpretations can be made when all of the data are considered together?

Using the Outcome Evaluation Tool in this way can also assist when writing reports for various constituencies, including funders.

REFERENCES AND OTHER RESOURCES

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Environmental Strategy: _____ Date _____

Name of person completing form: _____



PLANNING TOOL

SOCIAL HOST LIABILITY

Summary

Briefly provide the title and summary for this environmental strategy.

Title:

Summary:

Components

The primary component for a social host liability law is the efforts used in the media to promote the passage and enforcement of the social host laws.

Identifying Anticipated Outputs

What outputs will show that the activities were implemented as intended? Outputs are the direct products of activities and usually are measured in terms of work accomplished.

Component	Actions Taken	Anticipated Output(s): How many...
Component 1: MEDIA AWARENESS AND ADVOCACY	One-on-one meetings	__meetings
	Public hearings about passing a social host liability law	__hearings
	Press releases issued	__releases, __media outlets
	Letters to the editor written	__letter, __newspapers
	PSAs aired	
	Advertisements placed	
	Materials distributed	
	Press conferences held	
	Number of media personnel contacted	
	Other:	
Other:		

Planning each component

Each component needs to be planned. Consider all of the activities that need to be completed in order to make each component successful. Each component is made of several key activities.

Component 1: Media Awareness and Advocacy

Specify Key Activities	Scheduled Dates	Who Is Responsible?	Resources Needed/ Materials to Be Provided	Location
Gather and update media contact lists.				
Select dates and places for any news conferences planned: 1. Have one describing the data collected about alcohol-related problems especially those relating to adults providing alcohol to minors. 2. Have a second news conference if social host liability laws are changed or better enforced.				
Contact and meet with those responsible for establishing, maintaining, and enforcing social host liability laws including a) The state office which regulates alcohol sales licenses, b) The local police department c) The local planning department d) Elected officials e) Parents and merchant groups f) Alcohol policy organizations g) Organizations influenced by alcohol availability, such as neighborhood organizations				
Write a news release publicizing the problems that can be caused when adults provide alcohol to minors.				
Work with local TV stations, radio stations, & newspapers to run PSAs describing the problems that can be caused when adults provide alcohol to minors and how social host liability laws can help reduce these problems.				
Mail a letter to the editors of local newspapers regarding the problems that can be caused when adults provide alcohol to minors and how social host liability laws can help reduce these problems.				
Invite the media to cover the public hearings about passing a new social host liability law				
Other:				
Other:				

Collaboration Partners

Who are the collaboration partners for the social host strategy and what are their intended roles?

Collaboration Partner	Role of Partner

Potential Barrier and Solutions

Passing and enforcing social host liability laws can be difficult. It is helpful to forecast what these challenges or barriers might be and to generate possible solutions for them. In the table below, common barriers are listed. The group can add others in the spaces provided and generate proposed solutions to each barrier.

Potential Barriers	Potential Solutions
Some states have Supreme Court decisions that prohibit lawsuits by third parties where the alcohol was served by social hosts.	Your coalition should consider sponsoring legislation to provide for third party liability for social hosts who serve those who are underage. Other solutions:
Parents may oppose such legislation, arguing that it is unfair to prosecute parents for providing alcohol to their own children.	In most states, under social host liability laws, parents cannot be sued for legally serving alcohol to their own children- parents can only be sued for serving children other than their own. In addition, a national survey showed that 83% of adults are in favor of laws that impose fines on adults who provide alcohol to those who are underage. Other solutions:
Parents may also oppose such a law because it may seem unfair to prosecute parents when they are not aware of or give permission for their children to have parties in their home.	Social liability laws usually apply to parents who fail to take adequate precautions to prevent underage drinking on their property and can be held liable for negligence. Some social host liability laws only hold those adults responsible who “knowingly” allow underage drinking parties in their home. Other solutions:
It may be difficult to enforce a law against hosts who provide alcohol to underage or intoxicated persons unless the person is caught destroying property or causing injury to themselves or others.	It is important to take steps to identify and intervene in situations where people may be providing alcohol to youth or those who are intoxicated. For example, police can routinely patrol alcohol outlets to prevent the transfer of alcohol from adults to underage youth outside of these establishments, and flyers can be distributed at liquor stores to educate buyers about the legal liability for providing alcohol to youth or intoxicated individuals. Other solutions:
Other:	Other:



Summary Checklist

What must be done to prepare for this strategy? Indicate “Y” (Yes), “N” (No), or “NA” (Not applicable) regarding the tasks below. Have these tasks/activities been sufficiently addressed?

CHECKLIST ITEM		If no, plan for completion	By when?
Component 1: Social Host Liability			
Y/N/NA	Resources obtained		
	Person responsible		
	Staff trained		
	Duties assigned		
	Location identified		
	Timeline written		
	Collaborative partners identified		
	Program materials developed		
	Barriers considered		
	Other:		
	Other:		

Environmental Strategy: _____ Date: _____

Name of person completing form: _____



IMPLEMENTATION TOOL

SOCIAL HOST LIABILITY

Monitoring Component Outputs

Component 1: Media Awareness and Advocacy

Output	Implemented. as Planned? (High, Medium, Low, No)	Anticipated Output(s)	Actual Output(s)	% Output Actual/ Anticipated
One-on-one meetings				
Public hearings about social host laws attended				
Press releases issued				
Letters to the editor written				
PSAs aired				
Advertisements placed				
Materials distributed				
Press conferences held				
Number of media personnel contacted				
Number of meetings with key stakeholders				
Other:				

Progress, Problems, & Lessons Learned Regarding Outputs

Planning Activities

Components	Key Planning Activities	Dates Scheduled to Complete Activity	Actual Date of Completion
<p>Component 1: MEDIA AWARENESS AND ADVOCACY</p>	Gather and update media contact lists.		
	Select dates and places for news conferences planned 1. Have one describing the data collected about drinking and driving and other problems associated with providing alcohol to minors. 2. Have a second news conference if social host liability laws are passed or better enforced.		
	Contact and meet with those responsible for establishing, maintaining, and enforcing social host liability laws including: a) The state office which regulates laws relating to alcohol sales b) The local police department c) The local planning department d) Parents and merchant groups e) Elected officials f) Alcohol policy organizations g) Organizations influenced by alcohol availability, such as neighborhood organizations		
	Work with local TV stations, radio stations, and newspapers to run PSAs describing the problems that can be caused by underage access to alcohol.		
	Encourage the local paper to run an article about the problems that can be caused by underage access to alcohol and how social host liability law can help.		
	Invite the media to cover the public hearings about passing social host liability laws.		
	Other:		
	Other:		

Progress, Problems, & Lessons Learned (i.e., barriers for not completing key activities on time)

Collaboration Partners

Anticipated Partner	Actual Partner	Anticipated Role	Actual Role

Progress, Problems, & Lessons Learned Regarding Collaboration

Large empty rectangular box for notes.

SOCIAL HOST LIABILITY LAWS

SUMMARY

The proposed ordinance holds adults responsible for underage drinking at parties on their property or on premises under their control. This ordinance applies to parties at hotels and motels, as well as at private homes, in meeting rooms or other rented facilities.

This ordinance is based on a Farmington Hills, MI Ordinance §80.455.

SECTION 1. Definitions

“Adult” - A person 18 years of age or older.

“Alcoholic Beverage” - Any beverage containing more than one-half of one percent alcohol by volume.

“Residence or Premises”- A hotel or motel room, home, yard, apartment, condominium, or other dwelling unit, or a hall, meeting room or other place of assembly, whether occupied on a temporary or permanent basis, whether occupied as a dwelling or specifically for social functions, and whether owned, leased, rented or used with or without compensation.

“Open House Assembly” - A social gathering of three (3) or more persons at a residence, other than the owner or those with rights of possession or their immediate family members.

“Control” - Any form of regulation or dominion including a possessory right.

SECTION 2. Prohibition

1. No adult having control of any residence or premises shall allow an open house assembly to take place or continue at this residence or premises if:

a. at the open house assembly any person under the age of twenty-one (21) years possesses or consumes any alcoholic beverage, in violation of Minnesota Statute section 340A.503,

b. the adult knows or reasonably should know that a person under the age of twenty-one (21) years will or does possess or consume any alcoholic beverage at the open house assembly, in violation of Minnesota Statute section 340A.503, and

2. the adult fails to take reasonable steps to prevent the possession or consumption of the alcoholic beverage by such persons under the age of twenty-one (21) years in violation of Minnesota Statute section 340A.503.

SECTION 3. Presence of Adult

Whenever an adult having control of a residence or premises is present in that residence or premises at the time of the violation of Section 2, it shall be prima facie evidence that such person knew of this violation.

SECTION 4. Protected Activities.

The provisions of this section shall not apply to legally protected religious observances.

SECTION 5. Repealer.

All ordinances or parts of ordinances are repealed only to the extent necessary to give this ordinance full force and effect.

SECTION 6. Penalties.

The penalties for violation of this section shall be as follows:

1. For the first violation, a fine not exceeding fifty dollars (\$50).
2. For subsequent violations a fine not less than one hundred dollars (\$100) and not exceeding seven hundred dollars (\$700).

This ordinance shall take effect immediately.



Model Social Host Liability Ordinance

WITH LEGAL COMMENTARY AND RESOURCES

SEPTEMBER 2005

A Publication of the
Training, Applied Research, and Alcohol and Drug Prevention Division
Ventura County Behavioral Health Department



The intent of this report is to provide useful information to municipal governments, private institutions and community coalitions who are formulating responses to the many problems caused by home parties involving underage drinking.

Using this Publication

This is public information and is meant to be shared. Copy and distribute this Policy Briefing as appropriate. For additional copies please visit www.venturacountylimits.org

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Model Social Host Liability Ordinance

WITH LEGAL COMMENTARY AND RESOURCES

SEPTEMBER 2005



A Publication of the
Training, Applied Research, and Alcohol and Drug Prevention Division
Ventura County Behavioral Health Department



Center for the Study of Law
and Enforcement Policy

A Center of the Pacific Institute for Research and Evaluation



Pacific Institute
FOR RESEARCH AND EVALUATION



VENTURA COUNTY LIMITS

A Community Partnership for Responsible Alcohol Policies & Practices

Table of Contents

- INTRODUCTION 2
- THE SOCIAL AND LEGAL CONTEXT..... 3
- HIGHLIGHTS..... 7
- MODEL SOCIAL HOST LIABILITY ORDINANCE 8
 - *Section 1: Short Title* 8
 - *Section 2: Legislative Findings* 8
 - *Section 3: Purposes* 9
 - *Section 4: Definitions* 9
 - *Section 5: Responsibility for Proper Property Management* 10
 - *Section 6: Penalties for Violation of Ordinance* 10
 - *Section 7: Recovery of Response Costs* 11
 - *Section 8: Billing and Collection* 12
 - *Section 9: Reservation of Legal Options* 13
 - *Section 10: Appeal* 13
 - *Section 11: Severability* 13
 - *Section 12: Effective Date* 13
- BIBLIOGRAPHY..... 14
- APPENDIX 15
 - Relevant California State Statutes..... 15
 - Sample California Ordinances 16
 - Useful Websites..... 22

Introduction

This is the third in a series of reports associated with Ventura County Limits, a Community Partnership for Responsible Alcohol Policies and Practices. Two previous reports considered issues related to underage and binge drinking in Ventura County, and the circumstances of drinking for young adults in Ventura County prior to their arrest for impaired driving (please see www.VenturaCountyLimits.org). Both of these publications suggested that home parties are settings in Ventura County where excessive alcohol consumption among underage and young adult drinkers can lead to dangerous—even deadly—consequences, and pointed to the need for new community prevention tools.

“Nearly three in ten (28.6%) of those 25 and younger that binge drink report last doing so in their own homes, and 45.2% report last binge drinking at someone else’s home. These data point to “house parties” as settings for binge drinking among young adults.”

—*Underage and Binge Drinking: Selected Findings from a Telephone Survey of Ventura County Residents (2005)*

As part of its county-wide initiative to reduce underage and dangerous drinking, including the serious and persistent problems associated with home drinking parties, the Ventura County Behavioral Health Department, in collaboration with the Center for the Study of Law Enforcement and Policy (CSLEP) of the Pacific Institute for Research and Evaluation (PIRE), has developed this publication to aid local governments and other community agencies in the formulation of effective prevention policies.

The model ordinance and commentary were designed to address communities of diverse settings and needs. They also take into consideration various concerns of municipalities with respect to effectively deterring loud, unruly or dangerous parties in private settings, using clear explanations of the different types of Social Host Liability and presenting options for imposing fees and recovering costs associated with law enforcement, fire, or other emergency response services.

In developing this publication the authors and sponsors have been encouraged by the intense concern of parents, community coalitions, law enforcement personnel and elected officials, all of whom have been calling out for better strategies to reduce the many social, health and public safety consequences of underage drinking parties. We hope the words on the following pages lead to community action, and, in turn, new social realities, that improve the quality of life and sense of safety for everyone in Ventura County.

The Social and Legal Context

The National Academies Institute of Medicine’s seminal report entitled *Reducing Underage Drinking: a Collective Responsibility*, released in 2003, documents the wide ranging and devastating consequences of adolescent and young adult consumption of alcoholic beverages. Estimating the annual social cost of underage drinking to be at least \$53 billion, *Reducing Underage Drinking* urges states and localities to enact a comprehensive set of strategies to reduce underage alcohol consumption. These strategies include strengthening social host liability laws to deter underage drinking parties and other gatherings.

Social host liability refers to laws that hold non-commercial individuals responsible for underage drinking events on property they own, lease, or otherwise control. Whereas laws prohibiting furnishing alcoholic beverages to underage persons target providing alcoholic beverages to underage persons, social host laws target providing the venue where underage drinking takes place.

A Practical Guide to Preventing and Dispersing Underage Drinking Parties (PIRE, undated) articulates why regulating underage drinking parties and other gatherings is an important priority and why social host liability laws should be considered an essential law enforcement strategy for deterring these gatherings:

Many people dismiss underage drinking as a normal “rite of passage” in adolescence. However, it is important to remember that alcohol is one of the most common contributors to injury, death, and criminal behavior among youth (US Department of Health And Human Services, 1992). Underage alcohol use can have immediate and potentially tragic consequences as well as long-range harmful consequences, such as increased risk for chronic alcohol addiction (Grant and Dawson, 1997). Enforcement activities to limit youth access to alcohol are critical to reducing underage drinking and its often tragic consequences. ...

One common way that underage drinkers gain access to alcohol is at parties. These parties are commonly large gatherings of young people in a home ..., in an outdoor area (like a beach or a park), or in some other venue (like a warehouse rented for the purpose). These parties can be particularly problematic because of the number of drinkers involved in the large quantities of alcohol consumed. Reports of alcohol poisonings, traffic crashes, property damage, community disturbance, violence, and sexual assault are all too common as a result of these parties.

Teen parties are a primary avenue for underage drinking for high school and college students – and of high consumption of alcohol and binge drinking. Mayer, Forster, Murray, and Wagenaar (1998) found that the most common setting for drinking among high school seniors was someone else’s home. High consumption (five or more drinks) is also associated with drinking in larger groups. The

authors conclude that interventions that modify the environments in which adolescents find themselves have an impact on alcohol consumption levels. “Policies aimed at increasing the liability of adults who provide alcohol to or drink with minors may help to reduce underage drinking.” (Mayer et al: 214).

Approximately 46,200 of Ventura County residents are in high school grades nine through twelve¹, living in widely different residential, rural farming, canyon, beach, and coastal communities. Communities, regardless of type, report that many parents have a high tolerance for teen parties, allowing them to occur on their property often without any supervision.² *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices* (PIRE, 1999) observes: “This tolerance apparently stems from three misconceptions or beliefs: (1) alcohol, particularly beer, is a relatively harmless drug compared to illegal drugs, and its consumption is part of the passage to adulthood; (2) permitting consumption in a residential setting is safer than having it occur in open areas, where there is a higher risk of problems; and (3) teen drinking is inevitable, and it is safer if it occurs in a controlled, residential setting.”

Ventura County has three community colleges in Moorpark, Oxnard, and Ventura; a new four-year university Cal State Channel Islands in the Camarillo area; and California Lutheran University, a private institution in Thousand Oaks. Clapp, Shillington, and Segars (2000) found that for college students, parties were among the most common occasions for socializing and were the settings most associated with heavy drinking. Similarly, Jones-Webb, Toomey, Miner, Wagenaar, Wolfson, and Poon (1997) found that a common source of alcohol for college drinkers was parties-- including house parties, outdoor parties, or fraternity parties. Respondents to youth focus groups saw little risk of law enforcement intervention at underage drinking parties, indicating that expectations about enforcement of underage drinking laws were low.

Community tolerance is compounded by the legal obstacles to law enforcement agencies in deterring teen parties and college gatherings. (PIRE, 1999: 27.) California law prohibits both furnishing alcohol to underage persons and youth possession on public property. On the other hand, state law does *not* prohibit youth possession on private property, and state law does *not* prohibit youth consumption anywhere. Law enforcement “detecting an underage party may not have legal grounds to enter the premises, be unable to confiscate the alcohol, trace its original purchaser, or hold the adult homeowner, landlord, or renter responsible for allowing the party on the premises.” (PIRE, 1999: 27.)

Three Different Types of Social Host Liability

Depending on the state and local jurisdiction, the hosting of a party on private property at which an underage drinker becomes intoxicated could result in three distinct types of liability against the social host: social host criminal liability, social host civil liability, and recovery of response costs. Each type of liability should be viewed as a separate legal strategy for deterring underage drinking parties.

¹ 2004 Series Public K-12 Enrollment Projections. Demographic Research Unit, Department of Finance. October 2004. <http://www.dof.ca.gov/HTML/DEMOGRAP/K12Grads04.xls> Accessed 9/1/05.

² Pacific Institute for Research and Evaluation. 1999. *Regulatory Strategies for Preventing Youth Access to Alcohol: Best Practices*. <http://www.apolnet.ca/resources/education/bestpractices.html>. Accessed 9/1/05.

State Social Host Criminal Statutes

Social host criminal liability involves a state statutory violation, enforced by the state through criminal prosecution and leading to criminal sanctions such as fines or imprisonment. As of January 1, 2005, nineteen states have enacted social host criminal liability statutes.³

There are two types of state social host criminal statutes:

- **Specific House Party Laws.** These statutes, often called “open house party” laws, explicitly address parties or other gatherings attended by underage persons on private property. As of January 1, 2005, there were six jurisdictions with explicit house party laws.
- **General Laws Addressing Adult Permitting/Allowing Underage Drinking.** As of January 1, 2005, thirteen jurisdictions have statutes that prohibit social hosts from allowing or permitting underage drinking on their property. Although addressing the same problems, general laws are broader in scope than specific house party statutes (e.g., they may prohibit adults from allowing underage persons to consume alcohol in settings other than social gatherings), but they still apply to the underage drinking party context. These general laws do not provide specific guidelines commonly contained in specific house party laws, such as, for example, what steps a host can take to stop an underage party in progress to avoid criminal sanctions.

State Social Host Civil Liability Laws

Social host civil liability holds social hosts potentially responsible for the injuries to third parties caused by guests whom the hosts had served or had allowed to consume alcoholic beverages. This form of liability, which can be imposed by either statutes or common law negligence principles, involves private litigation and come into play only if an injured third party decides to sue the social host. Before the 1980s, state courts and legislatures in the United States were reluctant to impose liability on social hosts, reasoning that they were not as capable of handling the responsibilities of monitoring their guests’ alcohol consumption as were commercial vendors. Over time, this initial reluctance waned, and courts and legislatures continued to impose liability against social hosts in a growing number of circumstances.⁴ This growth in the imposition of social host liability is particularly evident in cases in which the intoxicated person is underage.⁵ Today, courts and legislatures accord underage persons special treatment not accorded intoxicated adults, based on the rationale that “[underage persons], because of their youth and inexperience in both drinking and driving, need greater safeguarding from intoxication than adults.”⁶ Only the state legislature or state courts (as opposed to city and county governments) have the authority to impose this form of civil liability.

³ In addition, numerous local communities have passed ordinances that impose criminal liability on social hosts.

⁴ See Hall, *Clouded Judgment: The Implications of Smith v. Merritt in the Realm of Social Host Liability and Underage Drinking in Texas* (1998) 30 St. Mary’s L.J. 207, 217 (reviews historical development of social host liability in Texas); Note, *Tort Law: Social Host Liability for the Negligent Acts of Intoxicated Minors--Mitseff v. Wheeler*, 38 Ohio St. 3d 112, 526 N.E.2d 798 (1988) (1989) 14 U. Dayton L. Rev. 377 (reviews historical development of social host liability in Ohio); Comment, *Beyond Social Host Liability: Accomplice Liability* (1988) 19 Cumb. L. Rev. 553, 554; Note, *Social Host Liability to Third Parties for the Acts of Intoxicated Adult Guests: Kelly v. Gwinnell* (1988/1989) (1985) 38 Sw. L.J. 1297, 1298-1299.

⁵ See Note, *supra* note 1, 14 U. Dayton L. Rev. at 377.

⁶ See Comment (1992) 25 U.C. Davis L.Rev. 463, 471.

Response Costs Recovery Municipal Ordinances

A third type of social host liability occurs at the level of local government in the form of municipal (city or county) ordinances called “response costs recovery” ordinances. In general, these laws hold social hosts (including tenants) and landowners (including landlords) civilly responsible for the costs of law enforcement, fire, or other emergency response services associated with multiple responses to the scene of an underage drinking party or other gathering occurring on private property, whether or not the hosts or landowners had knowledge of the occurrence of the parties or gatherings.

As part of its county-wide initiative to reduce underage and binge drinking, including the occurrence of underage drinking parties and other gatherings, the Ventura County Behavioral Health Department’s Training, Applied Research, and Alcohol and Drug Prevention Division, in collaboration with the Center for the Study of Law Enforcement and Policy (CSLEP) of Pacific Institute for Research and Evaluation (PIRE), has published the following model response costs recovery ordinance. This model ordinance can be the basis for a powerful new legal tool to deter underage drinking parties and other gatherings in communities throughout the county.

The model ordinance is drafted in a manner that addresses communities of diverse needs. It also accommodates the varied concerns of both the county’s unincorporated areas and incorporated cities. The text of the model ordinance may be modified easily to address these differences. For the county, the model ordinance is best placed as a new Article 12 to follow Article 11, *Loud or Raucous Nighttime Noise in Residential Zones* in Division 6, *Police Regulations*, of the Codified Ordinances of the County of Ventura.

Highlights

of the Model Social Host Liability Ordinance

- Recognizes that the occurrence of loud or unruly parties on private property where alcoholic beverages are served to, or consumed by, underage persons is harmful to the underage persons themselves, is a threat to public health, safety, quiet enjoyment of residential property and general welfare, and constitutes a public nuisance.
- Recognizes that persons responsible for the occurrence of loud or unruly parties on private property over which they have possession or control have a duty to ensure that alcoholic beverages are not served to, or consumed by, underage persons at these parties.
- Recognizes that landlords have a duty to prevent the occurrence of loud or unruly parties, including those where alcoholic beverages are served to, or consumed by, underage persons, on private property they lease to tenants, even if they do not have day-to-day, physical control of the property.
- Recognizes that law enforcement, fire, or other emergency responders often need to respond multiple times to disperse underage drinking parties, resulting in a disproportionate expenditure of the public safety resources on these parties, delaying police responses to regular and emergency calls, and reducing police calls to the rest of a community.
- Recognizes that cities and counties require a variety of enforcement strategies to abate underage drinking parties under varying circumstances and that present law constrains the ability of law enforcement to deter underage drinking parties and other gatherings.
- As a primary strategy for deterring underage drinking parties on private property, imposes a civil fee against social hosts (including tenants) and/or landowners (including landlords) for the recovery of specified costs associated with providing law enforcement, fire, or other emergency response services on multiple occasions to the scene of a loud or unruly party where alcoholic beverages are served to, or consumed by, underage persons.
- Provides option of imposing criminal penalties in cases of egregious circumstances or recalcitrant offenders.

Model Social Host Liability Ordinance

Section 1. Short Title.

This [Ordinance] shall be known as the “Model Social Host Liability Ordinance.”

Section 2. Legislative Findings.

The [city council/county board of supervisors] finds as follows:

- (a) [The City of _____/County of Ventura], pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote the public health, safety and general welfare of its residents;
- (b) The occurrence of loud or unruly gatherings on private property where alcoholic beverages are served to or consumed by underage persons is harmful to the underage persons themselves and a threat to public health, safety, quiet enjoyment of residential property and general welfare;
- (c) Underage persons often obtain alcoholic beverages at gatherings held at private residences or at rented residential and commercial premises that are under the control of a person who knows or should know of the underage service and/or consumption. Persons responsible for the occurrence of loud or unruly gatherings on private property over which they have possession or control have failed to ensure that alcoholic beverages are neither served to nor consumed by underage persons at these parties;
- (d) Landlords have failed to prevent the occurrence or reoccurrence of loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons, on private property they lease to tenants, which seriously disrupts the quiet enjoyment of neighboring residents;
- (e) Problems associated with loud or unruly gatherings at which alcoholic beverages are served to or consumed by underage persons are difficult to prevent and deter unless the [City of ___ Police Department/Ventura County Sheriff’s Office] has the legal authority to direct the host to disperse the gathering;
- (f) Control of loud or unruly gatherings on private property where alcoholic beverages are served to or consumed by underage persons is necessary when

such activity is determined to be a threat to the peace, health, safety, or general welfare of the public;

(g) Persons held responsible for abetting or tolerating loud or unruly gatherings will be more likely to properly supervise or stop such conduct at gatherings held on property under their possession or control;

(h) In the past and present, law enforcement, fire and other emergency response services personnel have and are required to respond, sometimes on multiple occasions, to loud or unruly gatherings on private property at which alcoholic beverages are served to or consumed by underage persons, and responses to such gatherings result in a disproportionate expenditure of public safety resources of the [City of ___/Ventura County], which are underwritten by general municipal taxes paid to the [City/County] by its taxpayers and residents and delaying police responses to regular and emergency calls to the rest of the [City/County].

[Include this finding only if the legislative body intends to make allowing a loud or unruly gathering a strict liability offense. Do not include finding if legislative body intends to require that the offender “knowingly” allowed a loud or unruly gathering:]

(i) The intent of this Ordinance is to protect the public health, safety, quiet enjoyment of residential property, and general welfare, rather than to punish. An ordinance that imposes strict liability on property owners and other responsible persons for the nuisances created by loud and unruly gatherings is necessary to deter and prevent such gatherings. Persons who actively and passively aid, allow or tolerate loud or unruly gatherings shall be held strictly liable for the nuisances created by such gatherings and the costs associated with responding to such gatherings.

COMMENT

This section on findings describes the reasons of the city council or county board of supervisors for enacting a social host liability ordinance. The findings are included in the city council’s/county board of supervisors’ enactment of the ordinance. When the ordinance is codified in a city or county’s municipal code, the findings, in the discretion of the legislative body, may be excluded. On the other hand, findings such as Finding (i) should be included in the codified ordinance to clarify legislative intent with respect to other provisions of the ordinance.

Section 3. Purposes.

The purposes of this Ordinance are:

- (a) to protect public health, safety and general welfare;
- (b) to enforce laws prohibiting the service to and consumption of alcoholic beverages by underage persons; and
- (c) to reduce the costs of providing police, fire and other emergency response services to loud or unruly gatherings, by imposing a civil fee against social hosts and landowners (including landlords) for the recovery of costs associated with providing law enforcement, fire and other emergency response services to loud or unruly gatherings, including those where alcoholic beverages are served to or consumed by underage persons.

COMMENT

Findings and purposes provide guidance to courts interpreting legislative intent and publicly explain the goals and objectives of a city council or county board of supervisors in enacting the ordinance. (*Metromedia, Inc. v. City of San Diego* (1980) 26 Cal.3d 848, 858.)

Section 4. Definitions.

For the purposes of this Ordinance, the following terms shall have the following meanings:

- (a) “Alcohol” means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.
- (b) “Alcoholic beverage” includes alcohol, spirits, liquor, wine, beer, and every liquid or solid containing alcohol, spirits, wine, or beer, and which contains one-half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances.
- (c) “Response costs” means the costs associated with responses by law enforcement, fire and other emergency response providers to loud or unruly gatherings, including but not limited to:
 - 1) salaries and benefits of law enforcement, fire or other emergency response personnel for the amount of time spent responding to, remaining at, or otherwise dealing with loud or unruly gatherings, and the administrative costs attributable to such response(s);

2) the cost of any medical treatment to or for any law enforcement, fire or other emergency response personnel injured responding to, remaining at or leaving the scene of a loud or unruly gathering;

3) the cost of repairing any [city/county] equipment or property damaged, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a loud or unruly gathering.

(d) “Juvenile” means any person under eighteen years of age.

(e) “Underage person” means any person under twenty-one years of age.

(f) “Loud or unruly gathering” means a party or gathering of two or more persons at or on a residence or other private property upon which loud or unruly conduct occurs. Such loud or unruly conduct includes but is not limited to:

- 1) excessive noise;
- 2) excessive traffic;
- 3) obstruction of public streets or crowds that have spilled into public streets;
- 4) public drunkenness or unlawful public consumption of alcohol or alcoholic beverages;
- 5) service to or consumption of alcohol or alcoholic beverages by any underage person, except as permitted by state law;
- 6) assaults, batteries, fights, domestic violence or other disturbances of the peace;
- 7) vandalism;
- 8) litter; and
- 9) any other conduct which constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare.

A loud or unruly gathering shall constitute a public nuisance.

(g) “Responsible person” means a person or persons with a right of possession in the residence or other private property on which a loud or unruly gathering is conducted, including, but not limited to:

- 1) an owner of the residence or other private property;

- 2) a tenant or lessee of the residence or other private property;
- 3) the landlord of another person responsible for the gathering;
- 4) the person(s) in charge of the residence or other private property; and
- 5) the person(s) who organizes, supervises, officiates, conducts or controls the gathering or any other person(s) accepting responsibility for such a gathering.

If a responsible person for the gathering is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the response costs incurred pursuant to this Ordinance. To incur liability for response costs imposed by this Ordinance, the responsible person for the loud or unruly gathering need not be present at such gathering resulting in the response giving rise to the imposition of response costs. This Ordinance therefore imposes vicarious as well as direct liability upon a responsible person.

(h) “Residence or other private property” means a home, yard, apartment, condominium, hotel or motel room, or other dwelling unit, or a hall or meeting room, whether occupied on a temporary or permanent basis, whether occupied as a dwelling, party or other social function, and whether owned, leased, rented, or used with or without compensation.

COMMENT

Section 4 provides definitions for the other sections of the Ordinance. The definitions help clarify the rights and obligations of owners, tenants, and other persons in control of the property on which a loud or unruly party occurs. The definitions of “alcohol” and “alcoholic beverages” are identical to the relevant definitions in state statute (Cal. Bus. & Prof. Code, § 23003, 23004).

Section 5. Responsibility for Proper Property Management.

Every owner, occupant, lessee or holder of any possessory interest of a residence or other private property within the [City of ___/County of Ventura] is required to maintain, manage and supervise the property and all persons thereon in a manner so as not to violate the provisions of this Ordinance. The owner of the property remains liable for such violations regardless of any contract or agreement with any third party regarding the property.

COMMENT

Section 5 provides that a property owner is liable for violating the ordinance (if certain conditions are met, described later in the ordinance). Under this provision, the owner can be held liable even if he/she has leased the property and does not have day-to-day responsibility for the property’s management.

[Note: At least one other jurisdiction outside California, the Town of Bloomsburg, Pennsylvania, not only has a recovery of response costs ordinance, but also has an ordinance requiring landlords to obtain a permit from the town before leasing rental properties to students.]

[This version of Section 6 is for Cities only:] Section 6. Penalties for Violation of Ordinance.

(a) It shall be an infraction for any responsible person to [knowingly] conduct, aid, allow, permit or condone a loud or unruly gathering at a residence or other private property.

(b) Fines.

1) A first violation of this Section shall be punishable by a \$250 fine.

2) A second violation of this Section at the same residence or other private property, or by the same responsible person, within a twelve month period shall be punishable by a fine of \$500.

3) A third or subsequent violation of this Section at the same residence or other private property, or by the same responsible person, within a twelve month period shall be punishable by a fine of \$1,000.

(c) The fines prescribed at subsection (b) are in addition to any response costs that may be assessed pursuant to this Ordinance.

(d) The second, third or subsequent violation fines prescribed at subsections (b)(2) and (b)(3) are payable whether or not the responsible person for such loud or unruly gathering is different from the responsible person for any prior loud or unruly gathering at the residence or other private property.

(e) The fine schedule prescribed at subsection (b) is a “rolling schedule” meaning that in calculating the fine payable the [Police Department or City Attorney shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place

at the residence or other private property in question during the statutory twelve month period. A warning given pursuant to this Ordinance shall remain in effect for the residence or other private property at a given address until a full twelve month period has elapsed during which there have been no response to a loud or unruly gathering at that residence or other private property.

(f) The fines set forth in this Section may be appealed pursuant to Section 10. The payment of any such fines shall be stayed upon any timely appeal.

COMMENT

This version of Section 6 should be included in city ordinances only. This section makes a violation of its terms an infraction. Infractions are crimes and public offenses. They are not punishable by imprisonment, however, and a person charged with an infraction is not entitled to a jury trial or to counsel appointed at public expense.

Even though the fines under this section would be prosecuted as criminal infractions, the prosecution would not have to prove criminal intent, that is, that the responsible person knew or should have known that he or she allowed a loud or unruly gathering. A violation of Section 7 should be deemed a strict liability infraction. Accordingly, if the legislative body chooses to make violation of this section a strict liability infraction, the word “knowingly,” appearing in brackets, would be omitted. In addition, Finding (i) in Section 2 would have to be included in the codified version of the ordinance to make clear that the legislative intent is to protect the public health, safety and welfare rather than to punish and that the ordinance imposes strict liability on property owners and other responsible persons for the nuisances created by underage drinking gatherings.

Some legislators may feel uncomfortable with an ordinance that does not require the prosecution to prove knowledge beyond a reasonable doubt under this section, particularly where the defendant is an absentee landlord or other property owner who was unaware of loud and unruly gatherings occurring on his/her property. In such case, the word “knowingly” could be included to require the prosecution to prove beyond a reasonable doubt, that the responsible person knew or should have known about the loud or unruly gatherings on his/her property.

In any event, imposition of response costs pursuant to Section 7 (see below) a fee imposed separate and apart from the fines and penalties imposed here under Section 6, would not require proof of criminal intent, that is, no proof of knowledge, since the recovery of response costs is

a strictly civil matter.

It should be noted that court proceedings of infractions are not lengthy; the matter may be resolved within a short number of months.

[This version of Section 6 is for the County Only:] Section 6. Penalties for Violation of Ordinance.

It is a violation of this Ordinance for any responsible person to conduct or allow a loud or unruly gathering at a residence or other private property. Such a violation subjects the responsible person to the fines and penalties set forth in Section 13112 of Division 13, *Abatement of Nuisances*, of the Codified Ordinances of the County of Ventura.

COMMENT

The county of Ventura has an enforcement scheme to abate public nuisances set forth in Division 13, *Abatement of Nuisances*, of the Codified Ordinances of the County of Ventura. Applying the administrative fines and penalties provisions of Section 13112 permits the county to impose administrative fines and penalties against responsible persons as a strict liability public nuisance offense, rather than as a criminal offense requiring proof of criminal intent (knowledge) beyond a reasonable doubt.

The fine under Division 13 initially is smaller than those infraction fines set forth in this model ordinance for cities. This is because the administrative fines under Division 13 are limited in amount by Government Code section 53069.4, which is incorporated by reference in Division 13.

Note: If this ordinance were enacted, additional changes to the rest of the county ordinance would be necessary, such as an expansion of the definition of “Enforcement Officer” in section 13050(b) of Division 13, to include emergency response providers.

Section 7. Recovery of Response Costs.

When law enforcement, fire or other emergency response provider responds to a loud or unruly gathering at a residence or other private property within the [City of ___/County of Ventura] within a twelve month period of a warning given to a responsible person for a loud or unruly gathering, all responsible persons shall be jointly and severally liable for the [city’s/county’s] costs of providing response costs for that response and all subsequent responses during the warning period.

When a law enforcement, fire or other emergency response

provider official makes an initial response to a loud or unruly gathering at a residence or other private property within the [City of ___/County of Ventura], the official shall inform any responsible person(s) for the gathering at the scene that:

- (a) The official has determined that a loud or unruly gathering exists; and
- (b) Responsible person(s) will be charged for any response costs required for subsequent responses to the scene for a loud or unruly gathering within a twelve month period.

Only one warning will be given to a responsible person(s) pursuant to this Section before the [City of ___/County of Ventura] assesses response services costs pursuant to *Section 7*. If a responsible person cannot be identified at the scene, the official may issue a warning to one or more persons identified in *Section (4)(g)* and/or subsequently return to the residence or other private property and issue the warning to a then-present responsible person. Warnings given to responsible persons who do not reside at the residence or other private property in question shall be delivered by first-class [and/or] certified mail.

COMMENT

The model ordinance sets forth a multi-tiered enforcement mechanism against responsible persons. With respect to cities at the first tier of enforcement, that is, at the first response stage, the responsible person would be held liable for a fine of \$250 for a first time infraction pursuant to *Section 6*. With respect to the county, the responsible person would be held liable for a fine of \$100 pursuant to the fines and penalties set forth in *Section 13112 of Division 13, Abatement of Nuisances, of the Codified Ordinances of the County of Ventura*. At the first tier of enforcement, the responsible person would not be liable for recovery of response costs.

With respect to cities and the county at the second tier of enforcement, that is, when emergency response providers are required to make a follow-up call to either the same gathering or another gathering within 12 months at the same location, the responsible person would be held liable for an increased fine and, in addition, for response costs. For a third or subsequent response to either the same gathering or another gathering within 12 months at the same location, the responsible person would be held liable for an even larger fine, as well as for additional response costs.

Section 7 sets forth the conditions under which a responsible person shall be held liable for the recovery of response costs. This occurs when (1) an emergency

response provider conducts a first response to the residence or other private property and determines that a loud or unruly gathering exists; (2) the emergency response provider gives a first warning to the responsible person; and (3) an emergency response provider conducts a subsequent response and either the loud or unruly gathering has not abated or another loud or unruly gathering is occurring at the residence or other private property.

An emergency response provider's determination that a loud or unruly gathering exists includes, but is not limited to, evidence that an underage drinking gathering is or was underway, in the form of the responding provider's personal knowledge or eyewitness accounts of third parties. Such evidence could include evidence of: underage persons fleeing the host's residence, presence of used or unused kegs, bottles, and cans, vehicles on the property not belonging to the host, complaints from neighbors, and property damage.

Legislative bodies should determine whether twelve months gives law enforcement sufficient time to enforce this Ordinance, especially against repeat offenders.

Recovery of response costs is a civil matter. Therefore, response costs recovery are imposed as a strict liability public nuisance offense, rather than as a criminal offense requiring proof of criminal intent (knowledge) beyond a reasonable doubt.

Section 8. Billing and Collection.

The amount of response costs shall be deemed a debt owed to the local entity by the responsible person held liable in *Section 7* for the loud or unruly gathering and, if a juvenile, by the juvenile's parents or guardians. Any person owing such costs shall be liable in a civil action brought in the name of the city for recovery for such fees, including reasonable attorney fees.

Notice of the costs for which the responsible person is liable shall be mailed via first-class [and/or] certified mail within 14 days of the response giving rise to such costs. The notice shall contain the following information:

- (a) the name of the person(s) being held liable for the payment of such costs;
- (b) the address of the residence or other private property where the loud or unruly gathering occurred;
- (c) the date and time of the response;
- (d) the law enforcement, fire or emergency service

provider who responded;

(e) the date and time of any previous warning given pursuant to *Section 7* and/or previous responses to loud or unruly gatherings at the residence or other private property in question within the previous twelve months; and

(f) an itemized list of the response costs for which the person(s) is being held liable.

The responsible person must remit payment of the noticed response costs to the [City Clerk/City Manager/Billings and Collections Division of the City of ___/County of Ventura] within thirty days of the date of the notice. The payment of any such costs shall be stayed upon a timely appeal made pursuant to *Section 10*.

COMMENT

The billing mechanism that should be applied depends in part on the billing system already in place in the specific jurisdiction. Most jurisdictions have in place ordinances that set forth the procedures for administrative billing and fines. Reference should be made to those procedures, and the ordinances that provide for them, in *Section 8* when this model ordinance is tailored to a specific jurisdiction. If such procedures do not exist in the jurisdiction, such procedures should be included in *Section 8*.

Section 9. Reservation of Legal Options.

Nothing in this Ordinance shall be construed as a waiver by the [City of ___/County of Ventura] of any right to seek reimbursement for actual costs of response services through other legal remedies or procedures, including [*for County ordinance only: Loud or Raucous Nighttime Noise in Residential Zones, Article 11 of Chapter 2, Division 6 of the Ventura County Ordinance Code*]. The procedure provided for in this Ordinance is in addition to any other statute, ordinance or law, civil or criminal. This Ordinance in no way limits the authority of peace officers or private citizens to make arrests for any criminal offense arising out of conduct regulated by this Ordinance.

COMMENT

Section 9 provides that the [City of ___/County of Ventura] does not waive its rights to seek reimbursement through other available legal means and that the ordinance does not restrict law enforcement in making arrests for any criminal offenses arising from the underage drinking event. With respect to the former, this provision ensures that a city or county would not be precluded from bringing an action for

public nuisance based on the same set of facts giving rise to a violation of the underage party ordinance.

Section 10. Appeals.

Any person upon whom is imposed a fine/penalty pursuant to *Section 6* and/or response costs recovery fees pursuant to *Sections 7* and *8* shall have the right to appeal the imposition of such fine/penalty or fees to the local jurisdiction pursuant to the procedures established by the local jurisdiction for appealing the abatement of public nuisances.

COMMENT

Due process arguably requires some administrative appeal procedure for both the imposition of fines/penalties and response costs. As with *Section 8*, regarding Billing and Collection, the appeal section should reference the existing administrative appeal process in the particular jurisdiction. For example, in the County of Ventura, reference should be made here to 13102, *Hearing on proposed abatement and imposition of administrative fines/penalties*, of the Codified Ordinances of the County of Ventura. If no appeal process exists in the jurisdiction, the procedures for such a process and hearing should be set forth in *Section 10*.

Section 11. Severability.

If any provisions of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Section 12. Effective Date.

This Ordinance shall take effect on _____

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Appendix

RELEVANT CALIFORNIA STATE STATUTES (AS OF SEPTEMBER 1, 2005)

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 25658

25658. Providing alcoholic beverages to persons under the age of 21; prohibition; criminal punishment; law enforcement decoys; additional punishment

- (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.
- (b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.
- (c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.
- (d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.
- (e)(1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars (\$250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars (\$500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides.
- (2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars (\$1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.
- (3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars (\$1,000), or by both imprisonment and fine.
- (f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed

premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution under any other provision of law, including, but not limited to, Section 272 of the Penal Code.

CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 25662

25662. Possession of beverage by minor; authorization of peace officers to seize beverages; disposition of seized beverages

(a) Any person under the age of 21 years who has any alcoholic beverage in his or her possession on any street or highway or in any public place or in any place open to the public is guilty of a misdemeanor and shall be punished by a fine of two hundred fifty dollars (\$250) or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed or is not attending school. A second or subsequent violation shall be punishable as a misdemeanor and the person shall be fined not more than five hundred dollars (\$500), or required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed or is not attending school, or a combination of fine and community service as the court deems just. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if available, in the area where the violation occurred or where the person resides. This section does not apply to possession by a person under the age of 21 years making a delivery of an alcoholic beverage in pursuance of the order of his or her parent, responsible adult relative, or any other adult designated by the parent or legal guardian, or in pursuance of his or her employment. That person shall have a complete defense if he or she was following, in a timely manner, the reasonable instructions of his or her parent, legal guardian, responsible adult relative, or adult designee relating to disposition of the alcoholic beverage.

(b) Unless otherwise provided by law, where a peace officer has lawfully entered the premises, the peace officer may seize any alcoholic beverage in plain view that is in the possession of, or provided to, a person under the age of 21 years at social gatherings, when those gatherings are open to the public, 10 or more persons under the age of 21 years are participating, persons under the age of 21 years are consuming alcoholic beverages, and there is no supervision of the social gathering by a parent or guardian of one or more of the participants.

Where a peace officer has seized alcoholic beverages pursuant to this subdivision, the officer may destroy any alcoholic beverage contained in an opened container and in the possession of, or provided to, a person under the age of 21 years, and, with respect to alcoholic beverages in unopened containers, the officer shall impound those beverages for a period not to exceed seven working days pending a request for the release of those beverages by a person 21 years of age or older who is the lawful owner or resident of the property upon which the alcoholic beverages were seized. If no one requests release of the seized alcoholic beverages within that period, those beverages may be destroyed.

SAMPLE CALIFORNIA ORDINANCES (AS OF SEPTEMBER 1, 2005)

CITY OF BERKELEY

CHAPTER 13.48 CIVIL PENALTIES FOR MULTIPLE RESPONSES TO LOUD OR UNRULY PARTIES, GATHERINGS OR OTHER SIMILAR EVENTS

Section 13.48.010 Findings and purpose.

This chapter is enacted for the following public purposes among others:

A. Due to inadequate supervision, some large gatherings of people, such as parties, frequently become loud and unruly to the point that they constitute a threat to the peace, health, safety, or general welfare of the public as a result of conduct such as one or more of the following: excessive noise, excessive traffic, obstruction of public streets or crowds who have spilled over into public streets, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, and litter.

B. The City of Berkeley (hereafter "City") is required to make multiple responses to such unruly gatherings in order to restore and maintain the peace and protect public safety. Such gatherings are a burden on scarce City resources and can result in police responses to regular and emergency calls being delayed and police protection to the rest of the City being reduced.

C. In order to discourage the occurrence of repeated loud and unruly gatherings, the persons responsible for the public nuisance created by these gatherings should be fined. (Ord. 6182-NS § 1, 1993)

Section 13.48.020 Loud or unruly gatherings--Public nuisance.

It shall be unlawful and a public nuisance to conduct a gathering of ten or more persons on any private property in a manner which constitutes a substantial disturbance of the quiet enjoyment of private or public property in a significant segment of a neighborhood, as a result of conduct constituting a violation of law. Illustrative of such unlawful conduct is excessive noise or traffic, obstruction of public streets by crowds or vehicles, public drunkenness, the service of alcohol to minors, fights, disturbances of the peace, litter. A gathering constituting a public nuisance may be abated by the City by all reasonable means including, but not limited to, an order requiring the gathering to be disbanded and citation and/or arrest of any law violators under any applicable local laws and state statutes such as: Berkeley Municipal Code ("BMC") Chapter 13.40 et seq. (Community Noise), BMC Chapter 13.36 et seq. (Disorderly Conduct/Obstruction of Public Way), Penal Code Sections 415 and 416 (Breach of the Peace); BMC Chapter 12.40 et seq. and Penal Code Section 374 et seq. (Litter); Penal Code Section 647 (Public Intoxication/Obstruction of Public Way); Bus. & Prof. Code Section 25658 (Selling Alcohol to Minors), Vehicle Code Section 23224 (Possession of alcoholic beverage in vehicle, persons under 21); BMC Chapter 13.68 et seq. (Carrying Dangerous Weapons), Penal Code Section 12020 et seq. (Unlawful Carrying and Possession of Concealed Weapons). (Ord. 6182-NS § 2, 1993)

Section 13.48.030 Notice of unruly gathering--Posting, mail.

A. Posting of Premises. When the City intervenes at a gathering which constitutes a nuisance under this chapter, the premises at which such nuisance occurred shall be posted with a notice substantially in the form attached hereto as Exhibit "A"* stating that the intervention of the City has been necessitated as a result of a public nuisance under this chapter caused by an event at the premises, the date of the police intervention, and that any subsequent event within a sixty-day period therefrom on the same premises, which necessitates City intervention, shall result in the joint and several liability of any guests causing the public nuisance, or any persons who own or are residents of the property at which the public nuisance occurred, or who sponsored the event constituting the public nuisance as more fully set forth in Sections 13.48.040--13.48.060 below. The residents of such property shall be responsible for ensuring that such notice is not removed or defaced and shall be liable for a civil penalty of one hundred dollars in addition to any other penalties which may be due under this section if such notice is removed or defaced, provided, however, that the residents of the house of sponsor of the event, if present, shall be consulted as to the location in which such notice is posted in order to achieve both the security of the notice and its prominent display.

B. Mailing of Notice to Property Owner. Notice of the event shall also be mailed to any property owner at the address shown on the City's property tax assessment records and shall advise the property owner that any subsequent event within sixty days on the same premises necessitating City intervention shall result in liability of the property owner for all penalties associated with such intervention as more particularly set forth below. (Ord. 6182-NS § 3, 1993)

* Exhibit A, referred to herein, may be found at the end of this Chapter 13.48.

Section 13.48.030A Exhibit A.

EXHIBIT A

(Section 13.48.030A)

IMPORTANT NOTICE REGARDING

PUBLIC NUISANCE

PURSUANT TO ORDINANCE NO. _____ -N.S., AS A RESULT OF A PRIOR DISTURBANCE AT PREMISES, THE NEXT DISTURBANCE WILL RESULT IN CIVIL PENALTIES IMPOSED UPON ALL PARTICIPANTS AND SPONSORS OF THE EVENT, AND ALL PROPERTY OWNERS OF THE PREMISES.

NOTICE IS HEREBY GIVEN THAT, pursuant to Ordinance No. _____ -NS. on _____, 199 ____, at _____ a.m./p.m., the Berkeley Police Department found that a public nuisance caused by a disturbance of the public peace and/or threat to public safety occurred at the premises located at _____ . If there is a subsequent event on these premises which constitutes such a public nuisance and necessitates the intervention of the Police Department on or before _____, (count 60 days from the date of first police intervention) every participant in and sponsor of such event, and the owner of the premises, shall be jointly and severally liable for the civil penalties connected with this response as set forth in Ordinance No. _____ -N.S.

(Signature of Officer issuing notice)

(Name of Officer)

(Title of Officer) (Phone Number)

199 __; _____
Date issued Case Number

Section 13.48.040 Persons liable for a subsequent response to a gathering constituting a public nuisance.

If the City is required to respond to a gathering constituting a public nuisance on the same premises more than once in any sixty-day period, the following persons shall be jointly and severally liable for civil penalties as set forth in Sections 13.48.050 below, in addition to liability for any injuries to City personnel or damage to City property.

A. The person or persons who own the property where the gathering constituting a public nuisance took place, provided that notice has been mailed to the owner of the property as set forth herein and the gathering occurs at least two weeks after the mailing of such notice. For purposes of this subsection, where a gathering takes place within the confines of a single unit in a building owned by a housing cooperative, the owner of the property shall be deemed to be the owner of the single unit and not the members of the housing cooperative in general. Where the gathering took place in the common area of a building owned by a housing cooperative, only the members of the cooperative owning units in the building where the gathering took place shall be deemed the owners of the property for purposes of this subsection. Other members of the housing cooperative may still be liable if they fall within the categories of person made liable by Section 13.48.040, subsections B., C., or D., below.

B. The person or persons residing on or otherwise in control of the property where such gathering took place.

C. The person or persons who organized or sponsored such gathering.

D. All persons attending such gathering who engaged in any activity resulting in the public nuisance.

E. Nothing in this section shall be construed to impose liability on the resident or owners of the premises or sponsor of the gathering, for the conduct of persons who are present without the express or implied consent of the resident or sponsor, as long as the resident and sponsor have taken all steps reasonably necessary to exclude such uninvited participants from the premises. Where an invited guest engages in conduct which the sponsor or resident could not reasonably foresee and the conduct is an isolated instance of a guest at the event violating the law which the sponsor is unable to reasonably control without the intervention of the police, the unlawful conduct of the individual guest shall not be attributable to the sponsor or resident for the purposes of determining whether the event constitutes a public nuisance under this section. (Ord. 6182-NS § 4, 1993)

Section 13.48.050 Schedule of civil penalties.

A. Civil penalties shall be assessed against all persons liable for the City's intervention to abate a gathering constituting a public nuisance as follows:

1. For the second response in any sixty day period the penalty shall be the total sum of five hundred dollars.
2. For the third response in any sixty day period the penalty shall be the total sum of one thousand dollars.
3. For any further response in any sixty day period the penalty shall be the total sum of one thousand five hundred dollars for each such further response.
4. The penalties that are provided herein shall be in addition to any other penalties imposed by law for particular violations of law committed during the course of an event which is a public nuisance under this ordinance, provided however, that if the only violation of law which constituted the public nuisance under this chapter is excessive noise, the remedies provided under this chapter shall be exclusive of any other remedies provided by law to the City for such excessive noise.

B. The City shall bill all persons liable for the penalties by mail by sending a letter in substantially the form attached hereto as Exhibit "B".* Payment of the penalties shall be due within thirty days of the date the bill is deposited in the mail. If full payment is not received within the required time for payment, the bill will be delinquent, and all persons liable for the penalties shall be charged interest at the maximum legal rate from the date the payment period expires and a further civil penalty in the amount of one hundred dollars. (Ord. 6182-NS § 5, 1993)

* Exhibit B, referred to herein, may be found at the end of this Chapter 13.48.

Section 13.48.050B Exhibit B.

EXHIBIT B

(Section 13.48.050B)

Date:

To:

Dear:

The City of Berkeley was required to abate the public nuisance caused by a gathering of ten or more persons at (location of property) _____, which substantially disrupted the quiet enjoyment of property in a significant segment of the adjacent neighborhood. This is the (second/third/fourth, etc.) such public nuisance at this property within the last sixty (60) days and thus a penalty of _____ \$550.00, \$1,000.00, etc.) is imposed on you. If you fail to remit this fine to the City of Berkeley by _____ (30 days later) you will be liable for an additional \$100.00 penalty, plus interest. The payment should be remitted to the address listed below.

Your liability is based on the fact that you were:

- An owner of the property to whom was sent prior notice of a public nuisance at the property within the previous 60 days; and/or
- A person who resides on or is otherwise in control of the property where the public nuisance took place; and/or
- A person who organized or sponsored the event creating the public nuisance at such property; and/or
- A person who attended the event constituting the public nuisance at such property and engaged in the conduct which resulted in the public nuisance.

If you believe that you are not liable you may defend this claim in the civil action which the City of Berkeley will file against you upon your failure to remit the penalty. You should be aware, however, that if you fail to prevail in that action you will be liable for the additional penalty of \$100/- and interest on the total penalties.

Sincerely yours,

(Name, title, address and phone number of signatory)

Section 13.48.060 Collection of delinquent costs for a subsequent City response.

A. The penalties assessed as a result of a subsequent City response to a loud or unruly gathering shall constitute a debt of all persons liable for the penalties in favor of the City and may be collected in any manner authorized by law and are recoverable in a civil action filed by the City in a court of competent jurisdiction. The remedies provided by this chapter are in addition to all other civil and criminal remedies available to the City with respect to the unlawful conduct constituting the public nuisance which gave rise to the need for the City response under this chapter.

B. The City of Berkeley may also collect the fees assessed against the owner of the property as provided in Ordinance No. 6156-N.S., The Recovery of Costs for Abatement of Nuisances Ordinance (BMC Chapter 1.25). (Ord. 6182-NS § 6, 1993)

Section 13.48.070 Nondiscrimination against students.

This chapter shall not be enforced in a manner which targets property housing students. Nothing in this section shall preclude the City from setting priorities in the use of its resources by enforcing this chapter against the events that are the most disruptive or against properties at which disruptive events are held most often or on the basis of other similar legitimate factors. (Ord. 6182-NS § 7, 1993)

CITY OF SANTA CRUZ

Chapter 9.37 CHARGES FOR SPECIAL SECURITY SERVICES AT LOUD OR UNRULY GATHERINGS

9.37.010 DEFINITIONS.

The following terms used in this chapter shall have the meanings set forth in this section.

(a) "Responsible person(s)" shall mean a person(s) with a right of possession in the property on which a loud or unruly gathering is conducted, including, but not limited to, an owner or tenant of the property if the gathering is on

private property, or a permittee if the gathering is a permitted gathering on public property, or any person(s) accepting responsibility for such a gathering. “Responsible person” shall additionally include the landlord of another responsible person and the parents and/or legal guardians of responsible persons under the age of 21 years. To incur liability for special security service charges imposed by this chapter the responsible person need not be present at the loud or unruly gathering resulting in the emergency response giving rise to the imposition of special security service charges. This chapter therefore imposes vicarious as well as direct liability upon responsible persons.

(b) “Special security services” shall mean the provision of any police, fire or other emergency response service to a loud or unruly gathering within twelve months of a first response as provided in this chapter.

(c) “Loud or unruly gathering” shall mean a gathering of two or more persons on private property or a permitted gathering of two or more persons on public property whose loud or unruly conduct constitutes a threat to public health, safety, quiet enjoyment of residential property or general welfare, including violations of Chapter 9.36. This term excludes incidents of domestic violence. A loud or unruly gathering shall constitute a public nuisance.

(Ord. 2005-20 § 1, 2005: Ord. 89-03 § 1, 1989).

9.37.020 RESPONSE TO LOUD OR UNRULY GATHERINGS.

When a police officer responds to a first loud or unruly gathering at premises in the city with a given address, the officer shall inform any responsible person at the scene that:

- (a) The officer has determined that a loud or unruly gathering exists; and
- (b) Responsible persons will be charged for the cost of any special security services required for subsequent responses to the scene within the next twelve months.

Only one warning will be given pursuant to this section before the city assesses special security service costs pursuant to Section 9.37.030. If a responsible person cannot be identified at the scene, the police department may issue a warning to one of the other responsible persons identified in Section 9.37.010(a) or subsequently return to the scene and issue the warning to a then-present responsible person. Warnings given to responsible persons who do not reside at the premises in question shall be delivered by certified mail.

(Ord. 2005-20 § 2, 2005: Ord. 89-03 § 1, 1989).

9.37.030 COST RECOVERY FOR SPECIAL SECURITY SERVICES.

When the police department or fire department or other city emergency responder responds to a loud or unruly gathering at premises with a given address in the city within twelve months of a warning given to a responsible person for those premises pursuant to Section 9.37.020, or while any such warning remains in effect pursuant to Section 9.37.050, all responsible persons shall be jointly and severally liable for the city’s costs of providing special security service for that response and all subsequent responses during that warning period.

(Ord. 2005-20 § 3, 2005: Ord. 89-03 § 1, 1989).

9.37.040 BILLING AND COLLECTION.

Charges for special security service shall include a reasonable charge for the emergency responder’s time and actual costs of any equipment used or damaged in connection with the response, together with an additional thirty-three percent of the special security charge for administrative overhead. These charges shall be computed and a bill submitted to the responsible person(s). The chief of police shall promulgate notice and billing procedures for this purpose. The bill shall be a debt owed to the city and failure to pay that bill within thirty days is a violation of this code. If the city is obliged to initiate litigation or other proceedings authorized by Title 4 of this code to recover this debt, the responsible person shall be liable for:

- (a) Costs of suit;
- (b) Attorney’s fees; and
- (c) Costs of collection.

(Ord. 2005-20 § 4, 2005: Ord. 89-03 § 1, 1989).

9.37.050 VIOLATIONS/FINES.

- (a) It shall be an infraction for a responsible person to conduct or allow a loud or unruly gathering on premises owned

by the responsible person or on premises rented by or to the responsible person. A third or subsequent violation within a twelve-month period shall constitute a misdemeanor.

(b) Fines.

(1) A first violation of this Section shall be punishable by a \$250 fine.

(2) A second violation of this section at a given address in the city within a given twelve-month period shall be punishable by a fine of \$500.

(3) A third or subsequent violation of this section at a given address in the city within a given twelve-month period shall be punishable by a fine of \$1,000.

(c) The fines prescribed at subsection (b) are in addition to any special security service charges that may be assessed pursuant to this chapter.

(d) The second, third or subsequent violation fines prescribed at subsections (b)(2) and (b)(3) are payable whether or not the responsible person at the time of the current loud or unruly gathering is the same person who was the responsible person for any prior loud or unruly gathering at those premises.

(e) The fine schedule prescribed at subsection (b) is a “rolling schedule” meaning that in calculating the fine payable the police department or city attorney shall count backward starting from the date of the most recent loud or unruly gathering to determine how many prior loud or unruly gatherings have taken place at the premises in question during the statutory twelve month period. A warning given pursuant to Section 9.27.020 shall remain in effect for the premises at a given address until a full twelve-month period has elapsed during which there have been no loud or unruly gatherings at those premises.

(Ord. 2005-20 § 5, 2005).

9.37.060 SERVICE OF ALCOHOLIC BEVERAGES TO MINORS.

The city council hereby finds that the service of alcohol to minors at loud and unruly gatherings and the consumption of alcohol by minors at loud or unruly gatherings has in the past and continues to pose a threat to the health and safety of all persons who reside in the city and also causes significant disruption of city residents’ quiet enjoyment of their households, especially in the city’s residential neighborhoods. In addition, such conduct on behalf of persons who serve alcohol to minors and minors who consume alcohol at loud or unruly gatherings results in the expenditure of a disproportionate percentage of the city’s police, fire and public safety resources which are underwritten primarily by general municipal taxes paid to the city by its taxpayers and residents. It is therefore the policy of the city council that in responding to loud or unruly gatherings, the city police department shall strictly enforce any and all applicable state laws pertaining to the service of alcohol to minors, and the consumption of alcohol by minors, and with respect to minors in possession of alcohol, the police department shall establish a “no tolerance” protocol by which the police department contacts, or causes the minor’s school to contact, the minor’s parents or legal guardians whenever the minor is found to be in possession of alcohol or narcotics or found to be intoxicated at a loud or unruly gathering. Where the minor’s school has an internal student disciplinary office any such incident shall likewise be reported to that office.

(Ord. 2005-20 § 6, 2005).

CITY OF SANTA ROSA

Chapter 10-28 MINOR ALCOHOL OFFENSE/LOUD PARTIES

10-28.010 Title.

The title of this chapter shall be “Minor Alcohol Offense/Loud Parties.” (Ord. 2999 § 1 (part), 1992)

10-28.020 Definitions.

For the purpose of this chapter, the following definitions shall apply:

(A) “Juvenile” means any minor child under the age of 18 years old.

(B) “Minor” means any person, under the age of 21 years old.

(C) “Party, gathering or event” means a group of persons who have assembled or are assembling for a social occasion or a social activity.

(D) “Person responsible for the event” means and includes, but is not limited to:

(1) The person who owns, rents, leases or otherwise has control of the premises where the party, gathering or event takes place;

(2) The person in charge of the premises;

(3) The person who organized the event.

If the person responsible for the event is a juvenile, then the parents or guardians of that juvenile and the juvenile will be jointly and severally liable for the costs incurred for police services pursuant to this chapter.

(E) "Police services" means and includes the salaries and benefits of the Police Officers for the amount of time actually spent in responding to, or in remaining at, the party, gathering or event and the administrative costs attributable to the incident; the actual costs of any medical treatment to injured Officers; the cost of repairing any damaged City equipment or property; and the costs arising from the use of any City equipment in responding to or remaining at a party, gathering or event. (Ord. 2999 § 1 (part), 1992)

10-28.030 Unlawful gatherings on private property when alcohol is served to minors.

Except as permitted by Article I, Section 4, of the California Constitution, no person shall suffer, permit, allow or host a party, gathering or event at his or her place of residence or other private property, place or premises under his or her control where five or more persons under the age of 21 are present and alcoholic beverages are in the possession of, or are being consumed by, any person under the age of 21 years. (Ord. 2999 § 1 (part), 1992)

10-28.040 Police services at parties, gatherings or events requiring a second response.

When any party, gathering or event occurs on private property and a police officer at the scene determines that there is a threat to the public peace, health, safety or general welfare, the person(s) responsible for the event will be held liable for the cost of providing police services during a second or follow-up response by the police, after a first warning to the person(s) responsible for the event to control the threat to the public peace, health, safety or general welfare. (Ord. 2999 § 1 (part), 1992)

10-28.050 Unsupervised possession of alcohol unlawful.

Except as permitted by state law, no person under the age of 21 years shall have in his or her possession, or consume, any alcoholic beverage at any place not open to the public, unless that person is being supervised by his or her parent or legal guardian. (Ord. 2999 § 1 (part), 1992)

10-28.060 Police service fees.

The amount of police service fees shall be deemed a debt owed to the City by the person responsible for the event and, if juveniles, their parents or guardians. Any person owing such fees shall be liable in an action brought in the name of the City for recovery for such fees, including reasonable attorney fees. (Ord. 2999 § 1 (part), 1992)

Useful Websites

Alcohol Policy Information System. Hosting Underage Drinking Parties: Criminal Liability.

http://alcoholpolicy.niaaa.nih.gov/index.asp?SEC={8BECDA97-22E1-4D4F-9CAAF70CA490CE27}&Type=BA_S_APIIS.

Connecticut Coalition to Stop Underage Drinking. Changing Policy: Ordinance Against Underage Drinking. http://www.preventionworksct.org/ctcoal_chgp/ctcoal_ordinance.html

Accessed 9/1/05.

San Diego County Policy Panel on Youth Access to Alcohol. The San Diego County Social Host Movement: A Case Study.

<http://www.alcoholpolicypanel.org/PDF/Social%20Access%20Case%20Study%202004.pdf>

Accessed 9/1/05



A Community Partnership for Responsible Alcohol Policies & Practices

Ventura County Behavioral Health Department
300 North Hillmont Avenue, Ventura, California 93003

www.venturacountylimits.org



Drafting A Social Host Ordinance

A **How-To Guide** For
Washington State Communities

Social Host ordinances focus on the setting where drinking occurs regardless of who provides the alcohol. These local ordinances provide law enforcement with additional tools that go beyond the Revised Code of Washington (RCW 66.44.270), which prohibits providing (also known as furnishing) alcohol to minors.



DISCLAIMER

THE INFORMATION PROVIDED HEREIN IS NOT OFFERED OR INTENDED TO CONSTITUTE LEGAL ADVICE OR TO SUBSTITUTE FOR OBTAINING LEGAL ADVICE FROM A LICENSED ATTORNEY, AND ITS USE DOES NOT IMPLY THE CREATION OF AN ATTORNEY/CLIENT RELATIONSHIP WITH ANY CONTRIBUTORS TO THIS DOCUMENT. THE INFORMATION PRESENTED IS OF A GENERAL NATURE, INTENDED AS BACKGROUND MATERIAL, AND LEAVES OUT VARIOUS DETAILS AND SPECIAL RULES.

WA State Coalition to Reduce Underage Drinking

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Table of Contents

- Introduction..... 4**
- Why a Social Host Ordinance to Address Social Liability? What Is It? 5**
- What Are the Key Concepts of a Social Host Law or Ordinance? 8**
 - Options Available Through Washington State Law8
 - Options Available Through Local Laws.....9
 - Comparing Social Host and Other Related Ordinances10
 - Criminal Liability Versus Civil Liability10
- Checklist for Drafting a Social Host Ordinance..... 12**
 - Identify the Problem(s) in Your Community.....12
 - Locate Relevant Existing State and Local Laws12
 - Draft the Key Components of a Community’s Social Host Ordinance.....12
- Working to Pass a Social Host Ordinance in Your Community..... 16**
 - Stakeholder Involvement and Support.....16
 - Know the Community and the Nature of the Problem.....16
 - Assess the Barriers to Implementation.....16
 - Basic Steps to Planning and Implementing Your Campaign.....17
- Putting It into Practice.....18**
 - Educational Strategies.....18
 - Enforcement Strategies.....19
 - Adjudication Strategies.....19
 - Evaluation Strategies.....19
- Final Notes.....20**
 - Celebrate!20
- Appendix.....21**

Introduction

Why are we concerned about underage drinking?

There are many good reasons for our concerns about youth alcohol use.¹

- Motor vehicle crashes are the leading cause of death among youth ages 15 to 20.
- Alcohol use is associated with many of the risky behaviors of youth, including drug use and delinquency, carrying a weapon, fighting, and perpetrating or being the victim of sexual assault.
- Alcohol use is also linked with youthful deaths by drowning, suicide and homicide.
- A person who begins drinking by the age of 15 is four times more likely to develop alcohol dependence than someone who waits until adulthood to use alcohol.
- During adolescence, new networks are being formed in the brain. Alcohol use during this time can affect brain development.

According to the Washington State Healthy Youth Survey (HYS)², 14 percent of 8th graders and 28 percent of 10th graders reported using alcohol within the past 30 days. In addition:

- Binge drinking (i.e., five or more drinks on at least one occasion during the previous two weeks) ranged from a low of 4 percent among Grade 6 students to a high of 25 percent among Grade 12 students.
- 5 percent of Grade 8, 10 percent of Grade 10, and 16 percent of Grade 12 students reported heavy drinking.
- About 1 in 7 Grade 6 students think it is easy to get alcohol, and that perception of availability increases to 1 in 3 Grade 8 students, 1 in 2 Grade 10 students, and 2 out of 3 Grade 12 students.

The cost of underage drinking

Underage drinking cost the citizens of Washington \$1.4 billion in 2007, according to the Centers for Disease Control. These costs include medical care, work loss, and pain and suffering associated with the multiple problems resulting from the use of alcohol by youth. Direct costs of medical care and loss of work alone equals \$515 million each year.

What lies ahead

While we have seen significant declines in teen alcohol use (e.g. 8th grade use has been cut in half since 1998), far too many of our youth continue to drink alcohol at a risk to both themselves and others. There is still much work to be done. The concerted effort of parents, communities, law enforcement, schools, local jurisdictions, businesses, and individuals is needed.

¹ National Institute on Alcohol Abuse and Alcoholism

² The Healthy Youth Survey is administered 6th, 8th, 10th, and 12th graders in public schools in Washington State every two years.

Why a Social Host Ordinance to Address Social Liability? What is it?

In Washington, 31% of 10th grade students who reported alcohol use in the previous 30 days said they obtained it from a party.³

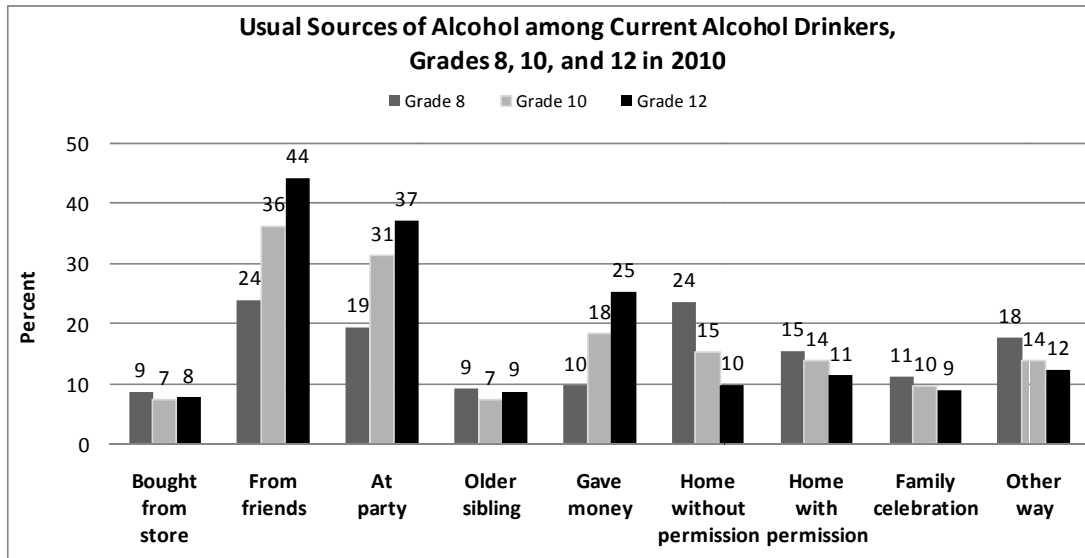
We know underage drinking parties take place in communities throughout our state. It might begin innocently with a few friends getting together for Friday night movies and someone brings alcohol. It might be young college students home on break meeting friends, and an older sibling buys alcohol for them. Or it might be a party hosted by parents who have decided that it is safer to take away the keys and let young people party in their home.



In any case, what is not being considered is the wide range of harmful and sometimes devastating consequences that result from underage drinking. One needs to look no further than news articles from our own state to find real-life examples. (See Appendix.)

Because we know that the large majority of underage drinkers get their alcohol from social sources (parents, siblings, friends, at parties, etc.), some states and local communities have taken steps to hold liable those persons who knowingly provide or serve alcohol to minors or allow drinking on their property.

WA State Healthy Youth Survey



Survey Question: During the past 30 days, how did you usually get alcohol (beer, wine, or hard liquor)? Choose all that apply.

Notes:

- Students could check multiple responses.
- Students who reported “did not get alcohol in the past 30 days” were not included in the results.
- The sample sizes for the 2010 results in this figure are: 621 Grade 8; 898 Grade 10; and 1,121 Grade 12 students.

³Source: 2010 Washington Healthy Youth Survey. The results of the entire survey can be accessed at <http://www.doh.wa.gov/healthyyouth/default.htm>.

Social Host ordinances seek to restrict youth access to alcohol in these settings.

Social Host ordinances focus on the setting where drinking occurs regardless of who provides the alcohol. These local ordinances provide law enforcement with additional tools that go beyond the Revised Code of Washington (RCW 66.44.270), which prohibits providing (also known as furnishing) alcohol to minors. “Supply” or “permit” specifies overt action on the part of an individual.

RCW 66.44.270 (*partial text – See Appendix for entire RCW*)
Furnishing liquor to minors

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

When law enforcement arrives on the scene of an underage drinking party, it can be difficult to determine who furnished the alcohol. Social Host ordinances enable law enforcement to cite the individual who hosted the party or who owns or controls the property where parties occur. Under Social Host ordinances, these responsible individuals may include older peers, parents, landowners and tenants.

Most responsible adults understand how important it is not to furnish alcohol to minors or model irresponsible drinking behavior. Social Host ordinances address those who dismiss the health-related warnings, insist on serving minors, host parties, and/or look the other way when others host on their property. The intent is not to seek out and punish adults who are regularly monitoring their children and who take reasonable precautions to prevent their children from hosting underage parties.

An additional concern is that underage drinkers often binge drink (meaning 5 or more standard alcoholic drinks for men and 4 or more for women in a short amount of time) which can lead to serious consequences for youth, including: violence (e.g. fighting, sexual assault), accidents, alcohol poisoning and even death. Social Host ordinances seek to prevent these negative consequences, while filling gaps in statutes and offering local communities an additional law enforcement tool.

Does a Social Host ordinance make sense for your community?

Before pursuing a Social Host ordinance, it is recommended that you understand the problems associated with underage drinking in your community and the organizations or programs that are currently in place to address such problems. These can vary greatly by community depending on factors such as demographics and culture, population density, whether a college is located in your community, and available social and recreational options for youth. Conducting a community assessment and collecting information on youth substance use (how, when, where and what) from youth, parents, law

enforcement, health care providers and other community members allows you to define the problem of underage drinking in your community. A simple assessment tool is included in the Appendix to provide guidelines on the kind of information you will want to collect.

If you are interested in completing a larger, overall community assessment as part of a Substance Abuse Prevention Strategic Plan, the Substance Abuse and Mental Health Services Administration website is a good resource for doing so. It is recommended you use the Strategic Prevention Framework as your guide. It can be accessed at: <http://www.samhsa.gov/prevention/spfcomponents.aspx>

Once you have completed an assessment and are able to provide information on underage drinking and the associated problems for your community, you will be better able to know if a Social Host ordinance may be appropriate for your community. Social Host ordinances often make sense for communities when assessment findings indicate:

- That youth often obtain alcohol at parties on private property, such as in open lots, rental properties, residences, motels, wooded areas, etc.;
- There is a significant population of college students living off campus;
- There is a high instance of youth obtaining alcohol from family and friends; and
- There is a high incidence of binge drinking and the problems associated with such.

After assessing the community, it is recommended that a plan be developed outlining the specific strategies that will target the identified problems and issues. A sample plan is included in the Appendix.

Answering the question of “Why Now?”

As you discuss the issue of a Social Host ordinance, you may be asked why this is important. After all, some may say, I partied when I was young, and I turned out okay. It is important to help others understand that changes have occurred over time that increase the risk for young people. For instance, inexpensive, sweet, high alcohol content beverages in super-size containers are marketed in a manner that appeals to youth. Popular social networking sites, such as Facebook and Twitter, encourage binge drinking and glamorize heavy alcohol use.

A specific example that underscores this occurred in October, 2010. Nine students from Central Washington University were hospitalized for alcohol poisoning after consuming dangerous quantities of alcoholic energy drinks at a party. They didn’t know that the combination of high alcohol content (12 percent alcohol by volume), stimulants, and quantity (23.5 oz. in one can) was the equivalent of about 5 standard beers plus at least 3 cups of coffee. When students became ill and began passing out, they thought they had been drugged.

Newspaper articles with additional examples can be found in the Appendix.

Violence, an increased risk of alcohol dependence later in life, negative impacts on memory and learning, school drop-out, unwanted sex, sexually transmitted diseases, and alcohol poisoning are some of the unintended consequences of underage drinking.

The answer to “Why Now?” is that our youth are our priority.

What Are the Key Concepts of a Social Host Law or Ordinance?

Social Host ordinances focus on the location where drinking occurs.

Social Host ordinances hold **non-commercial individuals**, (e.g. older peers, parents, landowners, and tenants), responsible for underage drinking gatherings on property they own, lease, or otherwise control. Whereas furnishing laws target the act of **providing alcoholic beverages** to underage persons, Social Host ordinances target the **location** where underage drinking takes place.

Social Hosts are individuals who hosted the party, or who own or control the property where the party occurred. There are two main types of liability a Social Host faces when underage drinking occurs on the property they own or control:

Criminal Liability

A Social Host may be held criminally liable by law enforcement for committing a misdemeanor. Misdemeanor crimes may be punishable with fines and jail time.

Civil Liability

A Social Host may be found liable in a private lawsuit brought by someone injured by a guest allowed to drink on the host's private property. Civil liability on the local level may include monetary fines or other penalties, such as completing a prevention education program.

Options Available Through Washington State Law

Social Host Criminal Liability

Washington law currently makes it “unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control.” (RCW 66.44.270(1)). The violation of this subsection is a gross misdemeanor.

Law enforcement officers have found that the current state law is difficult to enforce because a person must have evidence that an adult knows that minors are drinking on their property and permitted it. Local Social Host ordinances create underage drinking laws that can be enforced without requiring proof of knowledge that underage drinking is occurring. Local Social Host ordinances can be written to target adults that fail to use reasonable precaution to keep alcohol out of the hands of minors.

For example, parents are planning an out-of-town trip. They have conversations with their teen about their expectations regarding behavior while they are gone, making it clear that parties are not allowed. They alert the neighbors to the fact they will be gone, and the neighbors are given the parents' phone number, and someone in the vicinity is identified as a responsible party who can make decisions in the parents' absence. The parents ask to be called if there are more than two cars at the home and/or if there are any indications of a party taking place. This may be considered reasonable precaution, especially if there is no history of questionable behavior on the part of the teen.

If parents are in the home but are in another location and not monitoring a get-together of teens, it may be determined that they reasonably should have known that underage drinking was occurring.

The benefit of having a local ordinance is that it can be made specific to local conditions. Examples of local conditions include: towns with underage drinking problems near universities or Greek system housing; and houses or communities where law enforcement officers are repeatedly asked to respond to problem party sites, such as hotels, apartments, or secluded rural locations.

Social Host Civil Liability

Civil liability can be developed through state statute or state court decisions. In Washington, there is no state civil statute that imposes liability for providing a location for an underage drinking event. Similarly, court decisions have established that social hosts are not liable to third persons for injuries arising from the host's furnishing of alcohol to minors or to obviously intoxicated adults.

"I have a really powerful picture, and it's of my 15-year-old, Ryan's younger brother, who was scattering Ryan's ashes, and he's just in a cloud of ashes. So I think, again you're going to parent the way you're going to parent. But for the majority of parents out there that allow their kids to drink, what are you teaching them? What are you teaching them?"

~Mother of Ryan, age 19, who died in an alcohol-related crash

Options Available Through Local Laws

Local options include a combination of criminal and civil penalties such as fines, emergency response costs, administrative fines and jail time. Communities may choose to enact one or more of the following options:

Social Host Criminal Liability, punishable by either criminal infractions (monetary fines) or criminal misdemeanors (jail time)

- Holds adults responsible for underage drinking on property they own, lease or otherwise control. Adults can be charged even if they did not provide alcohol and even if they are not on the premises. The language of the ordinance often refers to the fact that adults "knew or reasonably should have known" that underage drinking was occurring.

Social Host Civil Liability—through civil or administrative citations:

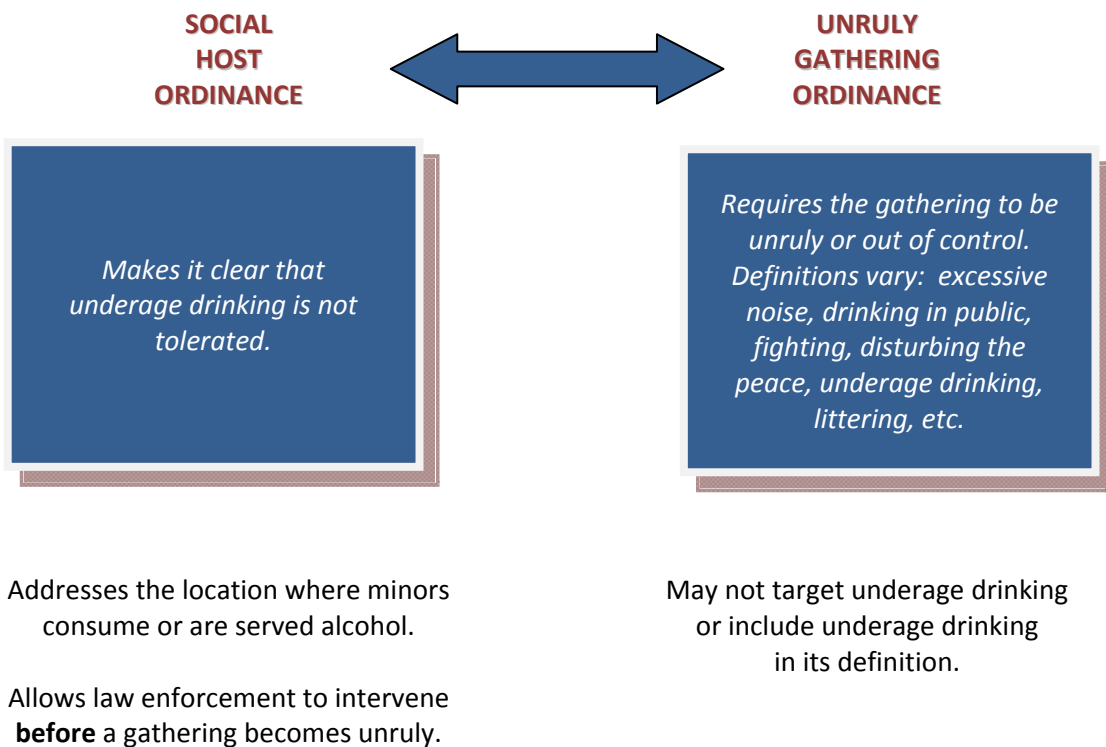
- **Response Cost Recovery**—Declares underage drinking parties on private property a public nuisance and holds Social Hosts civilly responsible for the costs of emergency response services provided in response to unruly gatherings (police, fire, and other emergency responders dispatched to parties, and court time necessary to settle a complaint).

- **Unruly Gathering Ordinance or “Red Tag” Ordinance**—Declares unruly gatherings unlawful and holds hosts civilly responsible by charging a fine that increases upon subsequent unruly gatherings. Note: Unruly gatherings are defined many ways, such as loud, with occurrences of fighting, underage drinking, etc. However, some communities don’t include underage drinking in their definition of “unruly.”

Comparing Social Host and Other Related Ordinances

The key question is: At what point as a community do we want law enforcement to intervene? In other words, how out of control does a party need to be before we want law enforcement to be involved? Social Host ordinances allow law enforcement to intervene when even a few underage drinkers are present and before the gathering becomes unruly.

While the advantage of an unruly gathering ordinance is that it gives law enforcement another tool to address loud and/or disruptive gatherings that do not necessarily include minors, the gathering may need to be out of control for law enforcement to be called. Also, noise ordinances, oftentimes the only option they have, can be very difficult to enforce, especially in communities with a small number of law enforcement officers.



Criminal Liability versus Civil Liability

Prosecuting parents, older siblings and friends as criminals may not be an effective deterrent to underage drinking, and may be a hard sell in a community. Instead, communities may decide to focus on

Civil Liability alone, such as Response Cost Recovery or Red Tag ordinances. Arguments for civil liability include:

- There is a lower **Standard of Proof** in civil cases than in criminal cases.
- May not require **Proof of Knowledge** that Social Host knew of underage drinking. (This can be worded to indicate liability if they knew or reasonably should have known.)
- Many municipalities have existing civil nuisance laws that can be modified to address underage drinking if they don't already. There is precedent for using nuisance laws in tobacco prevention work, as second hand smoke has been restricted by categorizing it as a public nuisance.

A woman accused of providing alcohol to a 17-year-old Tumwater boy has been charged with manslaughter in his death.

The autopsy showed he had a blood alcohol level of .36 percent and died of acute intoxication.

She told investigators she was trying to help homeless kids and preferred to have them drinking where she could keep an eye on them.

- From *The Olympian*, June 2010

Checklist for Drafting a Social Host Ordinance

Identify the Problem(s) in Your Community

First, understand the local substance abuse problems by completing a community assessment. Next, employ a strategic planning process to logically connect the substance abuse problems with possible solutions. After completing this process, you may find that Social Host ordinances are an appropriate strategy to address circumstances such as:

- Teen drinking parties in private residences
- Parties on rural or forested land
- University or college drinking parties held in privately owned homes or apartment units
- Greek House parties
- Loud or unruly gatherings including underage and legal age persons in resort area settings (e.g., river resort areas, ski vacation rentals)
- Underage drinking parties held in warehouses or garages rented for that purpose, or in foreclosed homes
- Parties occurring in hotels or motels

To be most effective, the Social Host ordinance should be tailored to a local community's day to day underage drinking problems.

Locate Relevant Existing State and Local Laws

Are there any existing local (city/county) laws on underage drinking, especially with regard to providing alcohol to minors, underage possession, underage consumption, and underage purchase, in your community? What are the existing local ordinances on public nuisances? What laws should be in place but are missing? The Social Host ordinance should be drafted in light of existing state and local (city or county) laws on underage drinking and local laws on public nuisance. In drafting a Social Host ordinance, one needs to know how other laws may affect the validity and enforcement of the Social Host ordinance.

Examine existing local public nuisance laws. The city or county's existing public nuisance laws may be modified to address underage drinking parties if this is the direction your community wants to go. This may be easier to achieve than passing a new stand alone Social Host ordinance.

Draft the Key Components of a Community's Social Host Ordinance

The following questions are provided as a guide as you consider which types of Social Host liability are most relevant in your individual community. You may want to consider using case studies such as those available in the Appendix.

1. **What is a "loud or unruly" gathering?**

"Loud or unruly gathering" is defined many ways; in some cases, it's a gathering of just "two or more persons." With definitions like this, are residents subject to liability any time they decide to have a party of any kind? Does it include Thanksgiving Dinner with family and friends? (Current Washington State law does allow parents to furnish alcohol to a their minor child when

consumed in the presence of their parent or guardian but not on a licensed premises.) Compare other cities' ordinances. Some cities define unruly as five or more persons.

RCW 66.44.270 (*partial text – See Appendix for entire RCW*)
Furnishing liquor to minors

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter [66.24](#) RCW.

2. What kinds of conduct constitute a “loud or unruly” gathering?

With certain exceptions, Washington state statute prohibits alcohol consumption in public. “Loud or unruly” conduct addresses the activity of drinking in public itself and the consequences of drinking in public, such as: excessive noise, fighting, disturbing the peace, etc.

“Loud or unruly” conduct may or may not include the conduct of underage drinkers, but some ordinances include the service of alcohol to minors or consumption of alcohol by minors as a definition of an unruly gathering.

“Loud or unruly” conduct language can be expanded to include the use of controlled and illicit substances. Another example of a definition is:

"...excessive noise or traffic, obstruction of public streets by crowds or vehicles, drinking in public, the service of alcohol to minors or consumption of alcohol by minors, fighting, disturbing the peace, and littering."

3. Who is a “responsible person”?

Communities should define whether Social Hosts under 18 or 21 years will be deemed “responsible persons” under the ordinance. Your city or county attorney can help with this distinction.

As an example, a "responsible person" can mean a person who is present and in charge of the premises or who organized the large party, gathering or event. If the Social Host is a minor, the minor's parent(s) or legal guardian(s) are also deemed responsible.

Communities should define whether absentee landlords and management agents are to be held liable under the ordinance. Will they be held responsible upon the first occurrence or will they be given a warning?

Some locations include in their definitions of responsible persons “any sponsor of the event.” This may be helpful in holding “party crews” liable.

Communities should identify any exclusion to the ordinance. For example, a city ordinance may not impose liability when the individual in possession of the property “could not reasonably foresee” or “reasonably control” the unruly gathering, as long as they have “taken all steps reasonably necessary to exclude the uninvited persons from the premises.”

4. What kinds of private property should be included?

Think about the types of problem properties in your areas. Examples include open forested land, motels, parks, empty lots, etc.

5. If you choose to include “response costs,” what is the time frame for imposing response costs? How frequently do first responders have to return to a party site for the fine to apply?

In some cases, fines can be applied when emergency responders are called to return within a twelve-month period of an initial warning.

Some cities have a much smaller time period for a return visit. Some cities dictate that subsequent calls during a 12 hour period following the initial written notice may incur recovery costs. Others may use a 120 day or 180 day period for subsequent violations. Smaller periods make it harder for law enforcement to invoke response costs when parties may be infrequent, but the parties held there are loud or unruly.

6. How are response costs calculated and billed?

Some municipalities calculate according to a pre-determined schedule of costs. Other municipalities calculate according to a schedule of penalties set forth in the ordinance itself

What should the costs be?

- Costs may be graduated, with increasing levels of penalties, depending on the frequency of responses.
- Costs may be tied to actual costs. For example, costs may include: “number of officers required (if “increased response” is required), overhead, related medical treatment, other loss or damages incurred to police department.”

What procedures exist now that could be used? (E.g., public nuisance enforcement.)

- Some localities’ public nuisance procedures have an administrative fine or abatement costs recovery procedure.
- Some localities’ public nuisance procedures are judicial, taking place entirely in court.

Setting out a billing procedure, with a right to appeal procedure, in the ordinance is important so that the community is placed on notice as to how costs will be billed and then collected.

Describing procedure in law makes enforcement easier for law enforcement and fair to violators.

7. Exceptions or defenses to limit liability for response costs

We want to be careful about what behavior we encourage or discourage in a Social Host ordinance. For example, if there is a real emergency at an underage drinking gathering, we want youth to call for help. Communities may choose to include exceptions for an emergency, as in the Gilroy, CA ordinance. Sec. 19C.5.(b)(3) states that "...administrative cost recovery fees will not be imposed in those situations where those present at the gathering call for emergency services for an actual emergency at the premises."

8. Does it make sense to include a criminal fine, in addition to the penalty of response costs recovery?

In some Social Host ordinances, a provision is included to fine wrongdoers in addition to the costs associated with emergency responders. For example, the wrongdoer is fined \$250 for the first time the emergency responders come out to a party, \$500 for second visit, and \$1000 for a third or subsequent visit.

A fine for an infraction can be imposed when the terms of the Social Host ordinance are violated. An infraction is not punishable by imprisonment, however. Unlike the situation with misdemeanors and felonies, a person charged with an infraction is not entitled to a jury trial or to counsel appointed at public expense.

In criminal cases, the prosecution usually has the burden of proving that an individual intended to break the law. However, when strict liability is specified, it does not matter what was intended. It does not require proof that the responsible person knew or should have known that s/he allowed a loud or unruly gathering.

Working to Pass a Social Host Ordinance in Your Community

Stakeholder Involvement and Support

There are several key stakeholders that must be involved in order to gain support and develop a Social Host ordinance in your community. It is ideal to build these relationships in advance of pursuing a Social Host ordinance.

- Law enforcement- what is their assessment regarding enforcing underage drinking laws? Do they need an additional tool in order to intervene on underage drinking parties? Are they able to take action when called to underage drinking parties?
- Local government- whether the city, county, or other municipality, it is critical to include the decision-makers that would ultimately vote to enact such ordinances.
- Judicial System- the City or County Attorney and judges are key stakeholders as they are tasked with interpreting local ordinances.
- Parents- as these ordinances are primarily focused on parents and other adult enablers, they are key individuals to mobilize.
- Youth- should be a part of the process. In communities where youth have been part of the effort and spoken about the need to enforce laws, they have had a positive impact on social ordinances being enacted.

Know the Community and the Nature of the Problem

Community coalitions can help mobilize residents and decision-makers by understanding the needs of the community and providing local statistics. Access to local data can help elected officials understand the problems with underage drinking and to justify taking a stand against underage drinking. Examples of persuasive local data include the Washington Healthy Youth Survey results, focus groups with youth and parents, and key informant interviews. It may also help to reframe the underage drinking issue as a health risk to our youth, such as by sharing research data about:

- The danger of underage drinking and its effect on adolescent brain development,
- Youth mortality rates, and,
- Increased risk of sexual assault and other violent crimes, etc.

Samples of data and research information are included in the Appendix.

Assess the Barriers to Implementation

It is important to consider the barriers to implementation of a Social Host ordinance and plan strategies to address them. Possible barriers include:

- Prevalent community norms that condone or turn a blind eye to underage drinking.
- Teens will move to unsupervised settings to drink, thereby increasing the risk to them and others.

- The perception that the ordinance is unfair to homeowners who may be held liable even if they didn't know the incident was taking place.
- Creates the risk of abuse by law enforcement officers; is an invasion of privacy.
- The belief that law enforcement resources are inadequate to enforce the ordinance.
- Parties will be pushed from one jurisdiction to another that does not have an ordinance.

Basic Steps to Planning and Implementing Your Campaign

- 1) Identify the key decision-makers, such as city council members, the mayor, etc.
- 2) Determine the key allies who have influence with the decision-makers. Think about who in your group has contacts and can recruit these allies. Develop strategies for doing so.
- 3) Develop a written statement that defines the problem and presents the case for an ordinance. Include facts to support your cause.
- 4) Draft the ordinance. There are sample ordinances that can be found through an internet search. (See Appendix for more information.) Include your local City Attorney or Prosecuting Attorney's office in drafting and reviewing the ordinance if possible.
- 5) Plan and implement a media campaign to get community support for the ordinance. Include local youth in advocating for the ordinance.
- 6) Prepare the presentation to the local governing body. Involve community members. Tips for presenting to your city council are included in the Appendix.

Putting It into Practice: Good IDEAS

If your community has enacted a Social Host ordinance- **congratulations!** You have made a significant accomplishment in protecting the health and safety of youth by using an environmental strategy that is durable and likely to be sustained because it has been enacted into law. Take time to celebrate your accomplishment and prepare for the work ahead.

The next steps involve putting these good “IDEAS” into practice:

- **I**nforming the public of the new ordinance
- **D**isseminating materials to all essential stakeholders
- **E**nforcing the law by working with law enforcement
- **A**djudicating offenders and working with the judicial system
- **S**urveying stakeholders and evaluating the effects of the ordinance on the prevalence and consequences of underage drinking in the community

Educational Strategies

Enacting a Social Host ordinance is just the beginning. For the ordinance to do its work and be a truly effective mechanism for reducing the incidence of and consequences associated with underage drinking, it is critical the community and local law enforcement understand what a Social Host ordinance does and who Social Hosts are. Educational efforts must take place at all levels from educating individuals to educating community systems. Examples of educational efforts include media advocacy and dissemination of educational materials.

Informing Through Media Advocacy

The purpose of media advocacy is to utilize the media outlets in your community to educate community members on who social hosts are, what the ordinance covers, and how the ordinance will be enforced. Media advocacy can include public service announcements, billboard advertisements, letters to the editor and editorial columns in addition to press conferences. Please see the Appendix for samples.

Dissemination of Educational Materials

You’ll need to get the word out to the community overall and while media advocacy can be a great place to start, community members will want and need more detailed, focused information, etc. can be created to share the details of the new ordinance. Educational materials should be targeted to the people who need the education. It will be important to create educational materials specifically for law enforcement, parents, older siblings/friends, landlords and motel/hotel owners depending on the audience. Remember, educational materials at this point are focused on the specific ordinance your community passed and how it will affect community members. There may be a need for additional materials detailing the prevalence and consequences of underage drinking. Examples are included in the Appendix.

Enforcement Strategies

Law Enforcement members are skilled and highly trained individuals in the area of enforcement of existing laws. However, law enforcement members may not be aware of what Social Host ordinances mean, how they can be enforced, and what to do when they are issuing citations for violation of the ordinance. It is critical to work with your local law enforcement agency to provide any needed support when it comes to the enforcement of Social Host ordinances.

Examples of how to work with local law enforcement include:

- Train law enforcement officers on the meaning and application of the new ordinance.
- Develop or expand a pre-existing tip line so community members can report underage drinking parties. Tip lines provide police with the information to prevent underage drinking parties or intervene sooner.
- Educate the local neighborhood watch group to help identify underage parties and train them to correctly notify law enforcement.
- Collect data to understand the application of the law and determine if any gaps exist.

Adjudication Strategies

Much like local law enforcement professionals, the legal system in your community is comprised of a highly trained and skilled workforce. However, the judicial professionals may not be aware of or prepared to deal with violators of the Social Host ordinance. It is critical to work with the judiciary in your community and provide any support you can when it comes to adjudicating individuals found in violation of the Social Host ordinance. Examples of how you can work with the judiciary include:

- Train judges and prosecutors regarding the meaning and application of the new ordinance.
- Examine the policies of the judicial system to ensure that cases are handled consistently.
- Collect data to understand the application of the law and determine if any gaps exist.

Evaluation Strategies

It is critical to evaluate how the passage of a Social Host ordinance impacts the prevalence and consequences of underage drinking. You will need to determine what data sources in your community will indicate how underage drinking has changed as a result of the passage of a Social Host ordinance. Establish community level indicators prior to the passage of a Social Host ordinance to accurately demonstrate how the ordinance has impacted underage drinking. These indicators should be a part of community assessment information. Community-level indicators may include:

- Healthy Youth Survey data indicating the average age of initiation for first use of alcohol.
- Healthy Youth Survey data indicating the percent of youth engaging in underage drinking in the last 30 days.
- Healthy Youth Survey data indicating the percentage of youth engaging in binge drinking.
- Local Law Enforcement data detailing the number of citations issued to minors in possession or minors caught drinking.

- Emergency Department (ED) data indicating the number of admissions to the ED where alcohol is the primary or secondary reason for admittance.
- The amount of resources spent by the ED and law enforcement in addressing underage drinking. (It is expected that eventually there will be a need for fewer resources and services as behaviors change.)
- A shift in community norms.

It is also important to monitor and evaluate the implementation itself. Some questions to ask include:

- Is the community aware of the ordinance, including stakeholders and youth?
- Is law enforcement implementing the ordinance?
- Are the penalties associated with the ordinance being imposed?
- Have there been any additional barriers that need to be addressed?

Final Notes

Most people do not condone underage drinking but they get caught in believing the prevailing myths that lead them to allow parties in their home. They may think they are keeping kids safer with in-home parties, or they think they are taking away the mystery and allure of drinking by allowing it prior to their children turning 21. As you proceed, it is important to understand the reasons people have for social hosting, and address those with facts. Giving adults the tools to say no to social hosting will help to change the norms of your community.

Celebrate!

Once the ordinance is in place and being enforced, don't forget to CELEBRATE this accomplishment! Congratulations!

For Further Reading:

Preventing Underage Drinking Using Getting To Outcomes™ with the SAMHSA Strategic Prevention Framework to Achieve Results, pages 245-258:

http://www.rand.org/pubs/technical_reports/2007/RAND_TR403.pdf

Appendix

Contents

News Stories.....	22
Assessing Your Community.....	27
Sample Plan.....	30
Case Studies.....	31
Facts About Underage Drinking.....	33
Social Host Ordinance Models.....	35
Media Samples.....	36
Current State Law: RCW 66.44.270.....	39
Tips from a Former City Council Member.....	40

News Stories

The News Tribune

Teen shot in legs at underage party in South Tacoma

Posted by Stacey Mulick on September 7, 2011 at 6:20 am

Catching up from the holiday weekend ...

A 16-year-old boy was shot twice early Saturday after a fight broke out at an underage drinking party.

The teen was among the attendees at the party in the 5400 block of South Wapato Street, Tacoma police reported.

A fight erupted at the party, then was broken up.

A gunman fired a number of rounds into the air and at the victim, police reported. The victim was hit in both legs.

Friends dropped the boy off at St. Joseph Medical Center in Tacoma for treatment. His injured (sic) were not considered life threatening, police reported.

Tacoma police were investigating.

Read more: <http://blog.thenewstribune.com/crime/2011/09/07/teen-shot-in-legs-at-underage-party-in-south-tacoma/#ixzz1XO3r74B1>

The Spokesman-Review

Drinks, not drugs, sickened CWU students – Spokesman.com – Oct. 25, 2010

Shannon Dininny
Associated Press

ELLENSBURG – Sugary, high-alcohol energy drinks that are popular with college students who want to get drunk quickly and cheaply came under renewed scrutiny today as investigators announced that nine freshmen had been hospitalized after drinking them at an off-campus party.

Several states are considering outlawing the drinks and at least two universities have banned them from campus while the Food and Drug Administration reviews their safety.

The issue received new attention after the Oct. 8 party in Roslyn, a picturesque mountain town known as the place where part of the 1990s television series “Northern Exposure” was filmed.

Police first responded to a report of an unconscious female in a grocery store parking lot and learned about the party from her friends. At the home, officers found a chaotic scene, with students from nearby Central Washington University passed out and so intoxicated that investigators thought they had overdosed on drugs.

Nine students who drank a caffeinated malt liquor called Four Loko were hospitalized with blood-alcohol levels ranging from 0.12 percent to 0.35 percent, and a female student nearly died, CWU President James L. Gaudino said. A blood-alcohol concentration of .30 percent is considered potentially lethal.

All the hospitalized students were inexperienced drinkers – freshmen ranging in age from 17 to 19. Toxicology results showed no drugs in their bloodstreams, though a small amount of marijuana was reported at the party, university police Chief Steve Rittereiser said.

Some students admitted drinking vodka, rum and beer with Four Loko, which is made by Phusion Projects Inc., of Chicago.

Phusion said in a statement that people have consumed caffeine and alcohol together safely for years. The company said it markets its products responsibly to those of legal drinking age and shares with college administrators the goal of making campuses safe and healthy environments.

“The unacceptable incident at Central Washington University, which appears to have involved hard liquor, such as vodka and rum, beer, our products, and possibly illicit substances, is precisely why we go to great lengths to ensure our products are not sold to underage consumers and are not abused,” the statement said.

The FDA sent a warning letter to Phusion Products in November 2009 asking the company for information that shows adding caffeine to alcoholic beverages is safe, and the case remains open, the agency said in a statement Monday.

Four Loko comes in several varieties, including fruit punch and blue raspberry. A 23.5-ounce can sells for about \$2.50 and has an alcohol content of 12 percent, comparable to four beers, according to the company’s website.

Health advocates say the caffeine in the drink can also suspend the effects of alcohol consumption, allowing a person to consume more than usual.

It gets you really drunk really fast and it gives you a lot of energy so you’re not going to be laying down and sleeping,” said 18-year-old CWU freshman Hyatt Van Cotthem of Everett, who said he’s tried the beverage but doesn’t drink it because the taste is “nasty.” He didn’t attend the party.

Regulating such drinks would be a good idea, Cotthem said, because he’s seen so many students do dumb things when drinking it. But he and a friend also questioned that the drink alone could have wreaked so much havoc.

There’s no way that Four Loko caused all these people to just pass out,” he said.

The nine sickened students have recovered and returned to their classes. No criminal charges have been filed, but Rittereiser said the investigation in the source of the alcohol continues.

Gaudino banned alcoholic energy drinks from CWU’s campus today, following the president of New Jersey’s Ramapo College, who banned the drinks last month after attributing several students’ hospitalizations to Four Loko.

“It’s not that we’d seen a lot of consumption, but we’d seen enough that it worried us, because it was in situations of extreme intoxication,” Ramapo President Peter Mercer said Monday. “Having seen no redeeming social use for it, and seeing the damage and danger it could pose, I ordered a ban.”

Mercer said he eagerly awaits the results of the FDA review and supports a measure to ban the drinks in New Jersey.

Utah and Montana have restricted the sale of the caffeinated malt liquors to just state liquor stores. A bill to ban the drinks in Washington state failed in the Legislature earlier this year, but McKenna and Gov. Chris Gregoire said they would support another effort.

McKenna also said his office would review the marketing of such drinks, particularly to minors, to determine if consumer protection laws have been violated. The state previously raised concerns with the nation’s two largest brewers, MillerCoors LLC and Anheuser-Busch InBev NV, about similar drinks.

“We never brought a lawsuit against them because they acted like good corporate citizens and removed the products,” McKenna said.

Steven Schmidt, a spokesman for the National Alcohol Beverage Control Association, said many states feel they need to act quickly on the issue because the drinks are increasing in popularity.

“There’s really a sense that people consuming these drinks don’t understand how much alcohol they are drinking,” he said. “These products pack a punch, and they are relatively inexpensive.”

<http://www.spokesman.com/stories/2010/oct/25/drinks-not-drugs-sickened-cwu-students/?p...> 9/8/2011

The Olympian

Published June04, 2010

Woman, 67, charged in teen’s death

JEREMY PAWLOSKI; Staff writer

Thurston County prosecutors have charged a 67-year-old woman with first-degree manslaughter for allegedly providing liquor to a 17-year-old boy from Tumwater last year, contributing to his death from complications due to acute intoxication, court papers state.

An arrest warrant for Roxanne Johnson, also of Tumwater, was issued Tuesday, the same day she was charged. A person is guilty of manslaughter when he or she recklessly causes the death of another.

On the morning of Aug. 21, 2009, Cherokee Lincoln, 17, was found dead at Johnson’s Israel Road apartment. Johnson told Tumwater detectives that the night before, Lincoln had appeared to be in a “drunken stupor” while he and a group of teens were at the apartment “drinking and playing cards,” court papers state. Johnson admitted providing the group with alcohol, stating “the kids are all homeless

and needed someone to watch out for them,” court papers state. Johnson also said that she “knew they would get alcohol from somewhere and she would rather have them drinking where she could keep an eye on them,” according to court papers.

But Tumwater Police Detective Jen Kolb said Thursday that she would not characterize Lincoln or the other teens who were in Johnson’s home that evening as homeless. Kolb described the teens as “wayward youth” and said Johnson’s apartment was a “flophouse for juveniles.”

Kolb said Thursday that Johnson had provided liquor to the group that was drinking in the home. In addition to Lincoln, a 15-year-old, an 18-year-old and a 23-year-old were drinking at the apartment that night, court papers state. Johnson told police that at some point during the night, someone escorted Lincoln to a bedroom while the group continued to play cards.

“According to the defendant, she checked on Lincoln at 3 a.m. where (she) found him on the floor,” court papers state. “She covered him with a blanket and went to bed.”

When medics arrived at the apartment, Lincoln was face-down on the carpet. It appeared to the medics that Lincoln “had suffocated from the position he was in or from aspirating vomit. . . alcohol was possibly a factor,” court papers state.

A toxicology exam later revealed that Lincoln had a blood alcohol level of 0.36 percent – more than four times the legal limit for driving while intoxicated.

Lincoln died of “positional asphyxia secondary of acute ethanol intoxication,” according to Thurston County Coroner Gary Warnock.

A Tumwater police officer at the scene of Lincoln’s death noticed “two nearly empty half-gallon bottles of alcohol” in the apartment.

The card players told police that they checked on Lincoln at 3:30 a.m., “and he was reportedly fine, sleeping and breathing, although he had slid off the mattress and was on the floor,” court papers state.

Kolb added that Johnson has cooperated with investigators and has said that she believes she was just trying to help the kids who drank in her home.

A phone number for Johnson could not be located Thursday.

Jeremy Pawloski: 360-754-5465 jpawloski@theolympian.com

KOMO News

Family: ‘A stupid game cost a young man’s life’

Originally printed at <http://www.komonews.com/local/66246057.html>

By Elisa Jaffe October 26, 2009

ONALASKA, Wash. – A night of drinking games proved deadly for a 15-year-old high school student, and now his family wants to use their grief as a warning to others.

Nick Barnes, a popular 10th-grader at Onalaska High School, died Sept. 21 after attending a birthday party at a friend’s house.

In his last text message to his mom, Nick promised no drinking at the birthday party. But after a chugging game, he was found passed out in the yard, with writing covering his nearly bare body.

“This was a stupid game that cost a young man’s life,” says his grandmother, Sue Patterson. “If you’re the first (one) passed out, they decorate you and make you the party favor.”

The 28-year-old owner of the party house dropped the Onalaska teen off at the hospital. But Nick never woke up.

His mother, Rachel Smith, says, “I’m still numb. I’m used to him coming home from school telling me how his day was and crawling in bed, and I don’t have that anymore.”

Nick’s family wants their pain to make a point about the dangers of underage drinking.

“These kids are playing with a loaded gun and don’t even know it,” says his grandmother. “And the people allowing it need to understand the responsibility. A child is gone.”

“He could have done things different, a lot different,” says Nick’s mother.

In Nick’s memory, his family encourages contributions to this new community center for kids – a safe, sober alternative to drinking parties.

“I don’t want this to ever happen to another family,” says Rachel Smith.

Nick died before knowing his fellow sophomores had voted him prince of his homecoming court. They had to do a re-vote after his death, and crowned Nick’s best friend.

Assessing Your Community

The first step in planning for a Social Host Ordinance is to assess your community needs, resources, gaps, and readiness to address the problem with an ordinance. As you begin planning you will want to look at:

- Method:** What process will be used for reviewing data, resources, gaps and readiness? What groups or coalitions will you involve? How will you involve the target population?
- Data Assessment:** What underage drinking data is needed? What anecdotal data is desired?
- Resource Assessment:** What resources are available in working on this issue? Who has shown readiness to be involved? What significant partnerships are present or needed?
- Analysis and Readiness:** Given all of this information, what steps will be taken and when? Is there adequate staff and/or volunteers to accomplish the tasks? Will sufficient time be committed?

More on Data Assessment

Adequate data to support your case for a Social Host Ordinance will be very important in framing your rationale. Listed below are areas to consider and sources of data.

1. What is the extent of underage drinking in your community? To what extent are youth binge drinking?

Data Sources:

- WA Healthy Youth Survey (For your county's Alcohol Fact Sheet, go to www.StartTalkingNow.org/GetInvolved.)
- Arrest data – Law Enforcement
- Treatment data – Local Health Jurisdictions
- School discipline data related to alcohol use – School districts and colleges and universities
- Local surveys

2. Where do youth get their alcohol?

Data Source:

- WA Healthy Youth Survey
- Campus data, if available
- Communities with a DFC grant may want to do a “But, Why Here?” problem analysis to help answer the question “Where do youth get their alcohol?”

3. What is the extent of other problems commonly associated with alcohol use? (E.g. Fights, vandalism, sexual assaults, etc.)

Data Sources:

- Crime and arrest data – Law Enforcement
- Chambers of Commerce and Neighborhood Associations
- College and university crime reports
- Hospitals and clinics

4. What laws, ordinances, and policies are in place and to what extent are they enforced?

Data Sources:

- State laws – RCW 66.44.270
- Local ordinances – Local law enforcement, including prosecuting attorney
- School policies – School district office, Student Affairs or Student Services offices at colleges and universities
- Law enforcement – are there policies in place that support multi-jurisdictional task forces or projects?

5. Additional questions to ask in your community:

- Is there additional anecdotal evidence concerning underage drinking parties?
- To what extent are underage drinking parties sanctioned by adults, either explicitly or implicitly?
- Communities with a DFC grant may want to do a “But, Why Here?” problem analysis to help answer these questions.

More on Resource Assessment

1. What groups and programs in your community directly deal with alcohol prevention? Enlist them for support.

- Schools
- Community mobilization

- Drug Free Communities or STOP Act grantees
 - County prevention programs
 - Community Networks
 - College or University coalitions, health centers, and Student Affairs/Dean of Students offices
 - Others
2. What groups or programs deal indirectly with alcohol prevention?
- Church youth groups
 - Scouts
 - After school programs (YMCA, Boys & Girls Clubs, Campfire, etc.)
 - Recreational and competitive sports programs
 - Campus clubs and sports programs
 - Volunteer programs that link community members with local police depts., such as Explorer or Senior programs and community policing efforts
3. What county or state programs can support your efforts?
- County Health Departments
 - City or County Parks and Recreation Departments
 - College and University prevention programs and coalitions
 - WA Coalition to Reduce Underage Drinking
4. What laws or policies are already in effect to support your efforts?
- Understand what the current state law does and doesn't do.
 - See if your community has an "unruly gathering ordinance".
 - See if your community has a "noise ordinance".
 - How well are current laws and policies enforced, and are there any enforcement barriers?

When you have gathered all the pertinent information and involved your local community, you have built a strong framework for implementing a Social Host Ordinance.

Sample Plan

After completing an assessment (see pages 6-7 of the Handbook), a plan may be developed.

Goal: Reduce underage drinking in our community by 5 percent over 2 years.						
Objective: Decrease youth access to alcohol in social settings.						
Strategy #1: Enact and implement a Social Host Ordinance						
Activities	Timeline		Who Is Responsible	Process Indicators	Outputs	Short Term Outcomes
	Start	End				
Determine the key components of the Social Host Ordinance (See checklist, page 12)					List of key components for inclusion in draft of ordinance.	Implementation of a Social Host Ordinance with widespread community support.
Build stakeholder support; use data (as identified & collected during the assessment process)					Compilation of data; list of stakeholders supporting ordinance	
Detail and address barriers					List of barriers with actions	
If required, work with governmental sub-committee to propose ordinance					Proposal to the local governing body	
Draft the Social Host Ordinance			Work with an Attorney – typically your ‘City Attorney’		Social Host Ordinance draft	
Present the ordinance to the governing body (ie: city or town council)					Meeting minutes	
Educate the community, including law enforcement and judicial system members					Media materials; training materials	
Evaluate					Evaluation data	

Case Studies

The following are some potential situations that can be used to consider the elements of a Social Host Ordinance. Questions to consider as you read these case studies may include:

- Whom will the law hold responsible?
- Did the adults (parents or others) explicitly or implicitly agree with the party?
- Did the adults (parents or others) take sufficient precautionary measures?
- Should the alcohol in the home have been locked up?
- Does it make a difference if this is the first party or if there have been others?
- Should someone who is underage be expected to police their older, yet still underage, friends?
- What responsibility or liability does a neighbor have when asked to intervene by the homeowner? Are they now the responsible party, and, if so, what happens if they don't respond appropriately?
- Should anything be included to hold someone harmless if they call for help when an overdose occurs, i.e. a Good Samaritan clause?

A. Out of Town

Paula and Tom are the parents of Joel and Lisa. Joel is 17 and a high school senior, and Lisa is 16 and a sophomore. Paula and Tom occasionally let Joel and Lisa have a glass of wine with them at dinner on Sundays but they have told Joel and Lisa that they don't want them drinking at parties. They have also made it clear that they can always call for a ride home no matter what, no questions asked.

Tom has been out of town all week on business, and Paula is going to join him for the weekend. Neither Joel nor Lisa has ever "gotten in trouble," so Paula leaves town without any real concerns about behavior, although as she goes out the door, she says, "Remember, no parties here."

Joel and his friends go out to a movie on Saturday night but quickly become bored afterwards, looking for something to do. Joel mentions that his parents are out of town, and his friends quickly put pressure on him to go hang out at his house. On the way they stop at a friend's house, and he grabs some bottles of beer from the well-stocked refrigerator in the garage. Another friend texts his older brother and asks him to buy them some alcohol and bring it to the house. The older brother comes with six of his friends, and soon the party is going. Lisa comes home and is persuaded to call some of her friends to join them. The loud music that ensues prompts a neighbor to call the police.

D. The Homecoming Bash

It's Homecoming weekend, and the text messages have been flying from teen to teen, telling everyone about the party out in the country on the Carleton's property. Older siblings home from college for the big crosstown football rivalry have bought the alcohol, and now about 100 people have descended on the property known to be easily accessible for parties. Students and recent graduates from the rival school show up, and a big fight breaks out. Someone calls the police, and they arrive.

B. Party at the Lake

It's been a hot summer, and the Powell family has spent a number of weekends at their lakefront cabin in the mountains. On Labor Day weekend, Melanie, an incoming college freshman, asks her parents if she can have one last get-together with her high school friends at the cabin before she goes off to college. After a long discussion about their expectations that there will be no alcohol at the cabin, the parents agree to the get-together. Melanie invites nine of her friends to the cabin for the long weekend.

The parents have also had conversations in the past with their neighbors at the lake, and they have asked the neighbors to let them know if they ever see their kids with alcohol. They have an understanding that they will all help to watch over each other's kids.

Everything goes fine until Sunday afternoon when one of the friends brings out a fifth of vodka. She challenges another friend to a drinking game. Although Melanie at first asks her friend to put the alcohol away, she relents when the friend says, "Hey, we're going to college next week. We need to learn to drink." The neighbor is called when one of the friends passes out and won't wake up.

C. I Didn't Know

David is home, and his son Kevin has a few friends playing video games. David knows that some of the friends have previously been in trouble for drinking, but everything seems to be going fine. He has checked on the teens a couple of times, bringing them the pizza that was ordered and some ice cream. At 11:00 David says goodnight and goes up to his room to watch some TV and go then go to sleep. After he leaves, Derek, a friend, goes out to his car and brings in the whiskey and rum he has stashed out there, and they begin drinking heavily. When Derek gets ready to leave, they try to take his keys away but he takes off running, gets in his car, and goes speeding down the street. He crashes into the chain link fence at the school three blocks away.

E. Keep Them Safe

Abby is turning 18 in two weeks and wants to have a party with beer and wine coolers available. She says her friends won't come if there isn't alcohol. After all, it wouldn't be a "real party."

Her mom, Kathryn, knows that if she tells them they can't have alcohol, they will take the party elsewhere, and she is concerned about them drinking and driving. She agrees to let Abby have the party in their home so she can keep an eye on them and keep them safe.

When the teens arrive, Kathryn tells them to put their car keys in a basket on the table. She then takes the keys and puts them away.

Dee, one of Abby's friends, has had 4 wine coolers. As Dee turns a corner in the house, she loses her footing and falls, gashing her head. She is bleeding profusely and an ambulance is called.

Facts about Underage Alcohol Use

A.

From “Too Smart to Start,” at www.toosmarttostart.samhsa.gov/teens/facts/consequences.aspx

Adolescence can be a wonderful time filled with physical and emotional growth. For some, however, adolescence takes a dark turn especially when underage alcohol use is involved.

- Underage drinking is a leading contributor to death from injuries, which are the main cause of death for people under age 21. Annually, about 5,000 people under age 21 die from alcohol-related injuries involving underage drinking. About 1,900 (38 percent) of the 5,000 deaths involve motor vehicle crashes, about 1,600 (32 percent) result from homicides, and about 300 (6 percent) are caused by suicides.¹
- Persons reporting first use of alcohol before age 15 are more than five times as likely to report past-year alcohol dependence or abuse than persons who first used alcohol at age 21 or older (16 percent compared with 3 percent).²
- Underage alcohol use increases the risk of academic failure, illicit drug use, and tobacco use. It can cause a range of physical consequences, from hangovers to death from alcohol poisoning. It can cause alterations in the structure and function of the developing brain, which continues to mature into the mid to late 20s and may have consequences reaching far beyond adolescence.³
- About 45 percent of fatalities in crashes involving a drinking driver under the age of 21 are people other than the driver.⁴

Sources

¹ Office of the Surgeon General. (2007). [The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking](#) (PDF 1.41MB) Rockville, MD: U.S. Department of Health and Human Services, p. 10.

² Office of Applied Studies. (2004). [Alcohol dependence or abuse and age at first use](#).

^{3,4} *The NSDUH Report*. Office of the Surgeon General. (2007). [The Surgeon General's Call to Action To Prevent and Reduce Underage Drinking](#) (PDF 1.41MB) Rockville, MD: U.S. Department of Health and Human Services, p. 11.

B.

According to the SAMHSA 2010 National Survey on Drug Use and Health:

- During the past month (30 days), 26.4% of underage persons (ages 12-20) used alcohol, and binge drinking among the same age group was 17.4%.

- Past-month alcohol use rates declined between 2002 and 2008 for those ages 12-13 (4.3% to 3.4%), 14 or 15 (16.6% to 13.1%), 16 or 17 (32.6% to 26.2%), and 18-20 (51.0% to 48.7%).
- Among race demographics, whites had the highest percentage of underage (ages 12-20) past-month alcohol use (30.4%). Asians had the lowest rate at 16.1%.
- In 2008, 56.2% of current underage drinkers (ages 12-20) reported that their last use of alcohol occurred in someone else's home; 29.6% reported that it occurred in their own home.
- Among underage drinkers (ages 12-20), 30.8% paid for the alcohol the last time they drank – including 8.3% who purchased the alcohol themselves and 22.3% who gave money to someone else to purchase it. Among those who did not pay for the alcohol they drank, 37.4% got it from an unrelated person of legal drinking age; 21.1% received it from a parent, guardian, or other adult family member.

C.

From www.mentorfoundation.org:

There is significant new research concerning adolescent brain development and the effects of alcohol and other drug use on the developing brain. This emerging science is providing new insights about how teenagers make critical and life influencing decisions, including their decisions about drug use. Brain imaging studies suggest that the brain continues to develop through adolescence and into young adulthood (age 25 years). During adolescence, the parts of the brain that are responsible for expressing emotions and for seeking gratification tend to mature sooner than the regions of the brain that control impulses and that oversees careful decision making. As one expert puts it the teenage brain "has a **well-developed accelerator** but only a **partly developed brake**."

The maturing brain of the adolescent may also pose a particular risk toward drug abuse. There is some evidence that the developing brain is prone to the deleterious effects of alcohol. One study showed that memory ability may be negatively affected by about 10% as a result of alcohol abuse.

Mentor has prepared a more detailed summary of this emerging science about brain development and the vulnerability of adolescents to drug abuse. The pack includes a [booklet](#) and a [slideshow](#) (complete with [speaker's notes](#), see below for preview). If you find these resources useful please consider making a donation using the form on the right of this page. Your donation will help support Mentor's work all over the world.

- [Download the brochure \(PDF\)...](#)
- [Download the slides \(PowerPoint, 10MB\)...](#)
- [Download the slides \(PDF\)...](#)
- [Download the slides with notes \(PDF\)...](#)

Please email info@mentorfoundation.org if you require help viewing these downloads or have any feedback for us.

Social Host Ordinance Models

The following information is provided to you as a resource. The Washington Coalition to Reduce Underage Drinking (RUaD) does not endorse any particular ordinance concepts or wording. Each community must decide what is most appropriate for their own community.

1. Ventura County, California has produced a 26-page document that includes legal commentary and resources. It can be accessed at:

http://www.ca-cpi.org/SIG_subsite/SIG_Documents/Resources/VCL_MSHLO_web2.pdf.

2. Mothers Against Drunk Driving (madd) has posted a 4-page template on their website. It can be found at:

http://www.madd.org/get-involved/advocacy/our-issues/social-host/Model_Social_Host_Ordinance_Cities.pdf

3. A document from Lake County, Illinois provides a list of concepts that were included in their ordinance.

http://www.zbths.org/165310918985860/lib/165310918985860/social_host_ordinance.pdf

4. From the state of Minnesota comes a 2-page template of a social host ordinance.

<http://docs.sumn.org/SampleSocialHostOrdinance.pdf>

Media Samples

1. Ventura County, California – Billboard campaign launched in May, 2011, to educate the public about social host ordinances. The billboards included a phone number to report a loud party involving underage drinking.



FOR IMMEDIATE RELEASE ON APRIL 23, 2010

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Randolph F. Snowden

Director

Supervisors to consider revised Minor Alcohol Offenses Ordinance

(Napa, Calif.--) At its regular meeting on Tuesday, April 27, the Napa County Board of Supervisors will consider revising the County's Minor Alcohol Offenses Ordinance, which was originally adopted in 1996. The Minor Alcohol Offenses Ordinance (Chapter 9.12 of Title 9 of the Napa County Code) prohibits gatherings on private property where underage drinking is allowed to occur. These types of ordinances close unsafe loopholes in existing State law related to "social hosting" and the possession or consumption of alcohol by underage persons.

The proposed revised ordinance would repeal the existing ordinance and replace it with new language that aligns the provisions of the ordinance with the latest research regarding effective approaches for reducing youth access to alcohol and other alcohol related problems.

The new ordinance would also address loud and unruly gatherings that create a public nuisance, regardless of whether or not underage drinking is allowed to occur.

Key features of the proposed ordinance include:

- Civil fines for individuals who host gatherings where underage drinking is allowed to occur;
- Fees to recover public safety services costs for repeated response to the same property within a six-month period for gatherings that are loud and unruly, regardless of whether or not underage drinking is allowed to occur;
- Consistent with State Law, parents maybe held financially liable for the actions of their children regardless of whether or not the parent knew about the gathering where underage drinking was allowed to occur.

The proposed ordinance is one tool in a Countywide effort to reduce underage drinking.

- Underage drinking is the #1 contributor to death of people under 21 in the U.S, with 5,000 alcohol-related deaths among young people every year. Underage drinking also leads to injury, sexual assault, increased risk for alcoholism and harm to the developing teen brain. This ordinance addresses a serious **local** problem as demonstrated by data including:

- 30% of Napa County 9th and 11th graders report *obtaining alcohol at parties or events outside school*. This response was one of a dozen options and was far greater than fake ID's (1%), stealing from stores (2%) or shoulder tapping^[1] (1%).
- 50% of Napa County 11th graders say it is "*very easy*" and 26% say "*fairly easy*" for students in their grade to get access to alcohol.
- 29% of Napa's 11th graders report "binge drinking" within the past month. Almost half of all Napa County 11th graders (48%) have "binged" (been drunk or sick after drinking), a higher rate than California students (46%)^[2].

Members of the public are invited to comment on the ordinance at a Public Hearing scheduled for Tuesday, April 27, 2010 at 11 a.m. in the Board of Supervisors Chambers, 1195 Third St. in Napa. This will be the public's only opportunity to comment on the new features of the ordinance.

^[1]2009 Napa County Report, California Healthy Kids Survey, 2009.

^[2]2009 Napa County Report and 2007 State CSS comparisons, California Healthy Kids Survey, 2009.

The Board of Supervisors and staff of Napa County are dedicated to preserving and sustaining Napa County for present and future generations as a community with generous open space, a thriving agricultural industry and a quality human and natural environment.

Current State Law

RCW 66.44.270

Furnishing liquor to minors — Possession, use — Penalties — Exhibition of effects — Exceptions.

(1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter [9A.20](#) RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter [9A.20](#) RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter [66.24](#) RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years.

[1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

Notes:

Severability -- 1987 c 458: See note following RCW [48.21.160](#).

Minors, access to tobacco, role of liquor control board: Chapter [70.155](#) RCW.

Tips from a Former City Council Member

Elected officials are very cautious about adopting new laws. They want to know how it benefits their residents, if it is enforceable, and if the public really supports it. Here are a few tips from my experience serving on the Lacey City Council. Earlyse Swift

Building your advocates:

- Identify the members of your city council and try to find out what each councilmember is particularly interested in. Often one person on the council is known for promoting youth and human services and would be particularly interested in this issue. Once you have found that possible advocate, invite him/her to coffee and ask what he/she thinks about the idea of a social host ordinance.
- The police chief must be supportive of a social host ordinance before the council will take action. It is useful to meet with the police chief to explore what problems he/she faces when dealing with this issue. If you know someone on the police force, talk with him/her first to learn more about the best approach to the chief.
- Contact any community groups (i.e. service clubs, churches) that would be supportive of a social host ordinance. Your city council needs to know that citizens want the ordinance.

Preparing your request:

- Observe a city council meeting in action to determine the best approach to use
- If you have an advocate within city hall, follow their advice about how to proceed. They will tell you how to request a place on the agenda, if the proposed ordinance will go to a committee first, and who else you should meet with prior to the Council presentation.

Presenting to the City Council:

- Provide packets of information to each councilmember, the city manager, city attorney, police chief, city clerk.
- If possible, have youth make the presentation. They need to be well-prepared so that they are clear about what they are requesting and why.
- Include in the presentation:
 - Why your community needs this ordinance
 - Which other communities have already adopted a social host ordinance
 - What the benefit will be to the city

Following the presentation:

- Send a thank you note to each councilmember and city manager
- Ask what the next steps will be and when they will occur.
- If they decide not to adopt a social host ordinance, do not be discouraged. Listen carefully to learn why they were reluctant so you can address their concerns and try again. It's a common belief that it takes three tries for a governing body to adopt a new idea.

Social Host Liability Laws

What are social host liability laws?

Social host liability laws state that adults who provide alcohol to minors or those who are obviously intoxicated can be held legally liable if the person is killed or injured or kills or injures another person. The extent of these laws varies from State to State. In some States, social host liability is covered under dram shop laws. Dram shop liability refers to a drinking establishment's potential financial liability for serving alcohol to an intoxicated or underage person who later causes injury to a third party. However, dram shop laws usually cover only commercial service and not individuals. As of January 1, 2010, 19 States had general hosting laws, and 8 States had laws specific to underage parties.

How do social host liability laws reduce underage drinking and its consequences?

Many youth get alcohol from older adults (e.g., siblings and parents) and from homes (e.g., parties). Social host liability laws try to prevent this by encouraging adults to think twice before purchasing kegs, for example, and allowing underage youth to drink in their homes. Currently, one third of teens report that it is easy to obtain alcohol from their own parents knowingly, which increases to

40 percent when the alcohol is from a friend's parent. One in four teens has attended a party where minors were drinking in front of parents.

Social host laws have proven effective in reducing underage drinking as well as its consequences. In one analysis of all 50 States, social host liability laws were associated with reductions in heavy drinking and with drinking and driving. A 2010 study found that among 18- to 20-year-olds, social host liability laws for minors reduced the drunk driving fatality rate by 9 percent.

How can my community take this action?

Take the following steps to initiate or strengthen social host laws:

Assess your State and community's current laws. If social host liability laws are already in place, then assess the degree to which they are being enforced. If an ordinance or law is not in place, mobilize to get one passed. Your effort could target the city, county, or State level.

Provide a ready-made social host liability law or ordinance as a model for lawmakers. Some issues to consider when drafting a law are who the law should target (i.e., whether the law covers adults who provide alcohol to those who are obviously intoxicated or underage youth or both) and the degree of knowledge that hosts

must have (e.g., whether adults must “knowingly” allow underage drinking parties in their home).

Build community support for social host liability laws from parent groups, law enforcement, and other community members. Public awareness activities can help the community understand the relationship between easy access to alcohol and increased motor vehicle crashes and fatalities. Promote public awareness of the fact that when parents or other adults provide alcohol to youth, they are breaking the law and contributing to alcohol-related problems in their community.

Measure and report successful outcomes. Some measures of the effectiveness of social host laws are:

- ▶ Rates of youth arrested for driving under the influence;
- ▶ Rates of alcohol-related crime;
- ▶ Number of alcohol-related motor vehicle crashes, injuries, and fatalities;
- ▶ Rate of adults arrested for providing alcohol to youth; and
- ▶ Rates of adults arrested for violating social host liability laws.

Resources Supporting Action

Centers for Disease Control and Prevention, *The Health Communicator’s Social Media Toolkit*, from http://www.cdc.gov/socialmedia/Tools/guidelines/pdf/SocialMediaToolkit_BM.pdf (accessed January 31, 2012).

Substance Abuse and Mental Health Services Administration, *Focus on Prevention*, from <http://store.samhsa.gov/shin/content/SMA10-4120/SMA10-4120.pdf> (accessed January 31, 2012).

U.S. Department of Education Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention, January 2011 Prevention Update, *Social Host Ordinances and Policies*, from <http://www.higheredcenter.org/services/assistance/prevention-update/social-host-ordinances-and-policies> (accessed January 31, 2012).

LIFE OF THE PARTY

Plan ahead for safety! Fill out this list of emergency contacts and keep it near your phone. Party planners are responsible for making sure the event is safe for everyone. Being responsible can make a difference — it can save lives.

POLICE: _____

FIRE: _____

DOCTOR: _____

HOSPITAL: _____

POISON CONTROL CENTER: _____

TAXI / SHUTTLE SERVICE: _____

NEIGHBORS: _____

OTHER: _____

**TO REPORT A SUSPECTED VIOLATION OR MAKE A COMPLAINT
CALL ABC'S HOTLINE AT (800) 552-3200.**



Virginia Alcohol Safety Action Program (VASAP)
701 East Franklin Street, Suite 1110 • Richmond, VA 23219
(804) 786-5895 • www.vasap.state.va.us



Virginia Department of Alcoholic Beverage Control (ABC)
2901 Hermitage Road • P.O. Box 27491 • Richmond, VA 23261-7491
(804) 213-4400 • www.abc.state.va.us

*This brochure was created by the the Public Affairs Division of the
Virginia Department of Alcoholic Beverage Control in partnership with the Commission on VASAP.*

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ABOUT ABC

The Virginia Department of Alcoholic Beverage Control is a state agency whose goals are to provide excellence in public service while ensuring public safety. Specialists at ABC are available to answer any questions citizens might have concerning regulations on special events where alcohol is served, since the agency is the licensing agent for such events. For license information, reporting suspected violations, and customer service information call the ABC Hotline at (800) 552-3200.

The mission of the Virginia Department of Alcoholic Beverage Control is to control the distribution of alcoholic beverages; operate efficient, conveniently located retail outlets; enforce the laws of the Commonwealth pertaining to alcoholic beverages and youth access to tobacco products; and provide excellent customer service, a reliable source of revenue, and effective public safety.

For more information on the responsible consumption and distribution of alcoholic beverages, contact your ABC regional office:

<p>Abingdon 102 Abingdon Place Abingdon, VA 24211 (276) 676-5502</p>	<p>Lynchburg 20353 Timberlake Rd. Lynchburg, VA 24502 (434) 582-5136</p>
<p>Alexandria 501 Montgomery Street Alexandria, VA 22314 (703) 518-8090</p>	<p>Richmond (North) 2901 Hermitage Road Richmond, VA 23220 (804) 213-4620</p>
<p>Charlottesville 900 Natural Resources Dr., # 700 Charlottesville, VA 22903 (434) 977-2974</p>	<p>Richmond (South) 2901 Hermitage Road Richmond, VA 23220 (804) 213-4624</p>
<p>Chesapeake 1103 South Military Hwy. Chesapeake, VA 23320 (757) 424-6700</p>	<p>Roanoke 3023 Peters Creek Road Roanoke, VA 24019 (540) 562-3535</p>
<p>Hampton 4907 W. Mercury Blvd. Hampton, VA 23666 (757) 825-7830</p>	<p>Staunton 460 Commerce Square Staunton, VA 24401 (540) 332-7800</p>

ABC Enforcement	ABC Public Affairs	ABC Education
(804) 213-4565	(804) 213-4418	(804) 213-4688

VISIT ABC ONLINE:
www.abc.state.va.us



WE ENCOURAGE YOUR INVOLVEMENT

Community participation plays a key role in ABC's efforts to maintain public safety while providing public service. Please do your part in helping prevent alcohol-related accidents — be responsible by planning ahead!

The Virginia Department of ABC has a 24-hour, seven days-a-week toll-free line that gives citizens an opportunity to report complaints or suspected violations of alcoholic beverage control laws. Get involved! Call (800) 552-3200.

The T.D.D. number for the hearing impaired is (804) 213-4687.

TOP 10 WAYS TO SERVE RESPONSIBLY:

When hosting an event where alcohol is served, take steps to keep your guests safe...

1. First and foremost, when you plan a party, put yourself in the mind of a non-drinker, and reassure your guests who don't want to drink that they can still have fun. Don't force drinks on your guests or rush to refill their glasses right away. Some guests may accept drinks they don't want in order to avoid appearing rude.
2. Always serve food, especially high-protein foods like cheese and meats that stay in the stomach longer, slowing down the absorption of alcohol into the bloodstream. Food causes alcohol to be digested slower, which is good. NOTE: food only changes the pace that alcohol enters your system; it has no effect on the pace that alcohol leaves your system.
3. Don't mix alcohol with drugs. Both legal and illegal drugs may interact with alcohol. Be careful not to take even aspirin before, shortly after, or while drinking.
4. Avoid mixing alcohol with carbonated beverages because carbonation increases the speed that the body consumes alcohol.
5. Have non-alcoholic drinks available. Ideally, orange juice or tea. Carbonated beverages should be reserved for the non-drinkers. Remember it's not good to mix carbonated beverages with alcohol; however, it is better for drinkers to have an additional carbonated beverage than it is for them to have an additional alcoholic beverage.
6. Stop serving alcohol two hours before the party is over, yet continue serving non-alcoholic drinks and food. FOR MOST PEOPLE, this two-hour wait will **not** be enough time for them to clear all the alcohol from their system, therefore be sure to find them a safe ride home via taxi or designated driver.
7. **DON'T LET PEOPLE DRINK AND DRIVE.** Car pooling and cabs can save lives. It's the responsibility of EVERYONE (especially the host of the party) to stop drinkers from driving. Make sure to ask yourself this question: is it better to ask a guest not to drink and drive, or rather to live with guilt if that same friend died in a car crash because you didn't stop him from drinking and driving?
8. Have jiggers or self-measuring one-ounce bottle spouts at the bar to measure alcohol for mixed drinks. Guessing the amount of alcohol for drinks can lead to excessive drinking.
9. Of critical importance: **BE CAREFUL WHO YOU INVITE.** If you invite good friends who are mature social drinkers, you shouldn't have a problem throwing a safe and fun party. If you invite strangers, or people who are not responsible around alcohol, you are bound for trouble. If you have a friend who tends to lack control around alcohol, don't invite him, or invite him on the condition that he won't drink. Remember, parties are supposed to be fun. How much fun is it to argue with someone about how it's not safe for him to drive? Avoid this by only inviting people who you can trust around alcohol.
10. Last, but far from least, make sure that all your guests know how you feel about drinking and driving. If they know that it concerns you, they will probably make an effort to be more responsible. Many people who would normally drink and drive will call a cab or stay the night if they know how much it worries you if they drive.

MOCKTAILS & EASY RECIPES



Plan your party or event so that the focus is on something other than drinking alcoholic beverages. Try the following recipes for non-alcoholic drinks and party food.

MOCK PINK CHAMPAGNE

1 cup sugar
1 6-oz. can frozen grapefruit juice
1 cup water
1 28-oz. bottle chilled ginger ale
1 6-oz. can frozen orange juice
1/3 cup grenadine syrup

Early in the day, mix sugar and water in a saucepan and boil for five minutes. Add frozen juices. Refrigerate. At serving time, add ginger ale and grenadine syrup. Stir lightly. Makes 10 servings.

CROCK POT WASSAIL PUNCH

2 cups cranberry juice cocktail
1 orange studded with whole cloves
2 quarts apple cider
2 three-inch cinnamon sticks
1/2 cup sugar

Combine all ingredients in a crock pot and simmer for about one hour on high or two hours or more on low. Serve in warmed mugs, garnished with orange slices or extra cinnamon sticks.

TOMATO BULL

Lemon & lime wedges
Salt, ice cubes
Bloody Mary mix
Celery sticks

Salt the rim of a 10-oz. glass. Fill with ice cubes. Squeeze the juice of a lemon and lime wedge into the glass. Top off with Bloody Mary mix. Garnish with a celery stick.

SANGRIA

4 oz. orange juice
4 oz. cranberry juice
2 slices each of lime, lemon, orange
4-6 fresh cranberries (optional)
Crushed or cubed ice
1 bottle sparkling apple cider

Place orange juice, cranberry juice and fruit slices into a pitcher. Add ice and pour whole bottle of sparkling apple cider over the rest of the ingredients. Stir with a spoon and serve in wine glasses. Makes four servings.

CITRUS COLLINS

2 oz. fresh-squeezed orange or grapefruit juice
1 oz. simple syrup
1 oz. fresh-squeezed lemon juice
Club soda

Fill a 12-oz. glass with ice cubes. In another glass, combine orange/grapefruit juice, lemon juice, and simple syrup. Pour over ice. Top off with club soda. Garnish with orange slice and a cherry.

HOT BUTTERED ASIAN CIDER

16 oz. unfiltered apple cider
1 teaspoon Chinese 5 spice
2 tablespoons honey
2 teaspoons unsalted butter, cut into small pieces

Put cider in a saucepan with honey and Chinese 5 spice and bring to a boil. Simmer for one minute. Take off the heat and put in the unsalted butter. Stir until the butter melts and serve. Makes two servings.

ZESTY CHEESE & CHICKEN

Grated peel and juice of half of fresh lemon
1 package (3 oz.) cream cheese, softened
1 1/2 cups chopped cooked chicken
1/3 cup crumbled blue cheese
1/4 cup chopped green onions
Optional fixings: celery, cherry tomatoes, tart shells, mini cream puffs, rye or wheat sliced bread, avocado, lettuce and sliced tomato.

Combine lemon peel, juice and cream cheese. Add chicken, blue cheese and green onions, stirring until blended. For appetizers, spoon filling into celery or cherry tomato shells, miniature cream puffs or tart shells, as desired. Makes 1 1/2 cups filling. Sandwich variation: spread mixture on sliced rye or wheat bread. Top with lettuce, tomato, avocado and additional slices bread. Makes four sandwiches.

SASSY SALMON DIP

1 can (about 7 oz.) salmon, drained, flaked
Grated peel of lemon half, 1 tablespoon lemon juice
1 cup dairy sour cream
1/4 cup chopped ripe olives
3 tablespoons finely chopped green onions
2 tablespoons chopped parsley
Serve with assorted raw vegetables or chips

Combine main ingredients, chill. Serve as dip.



Alcohol affects each individual differently. Even the best driver can be impaired after consuming just one alcoholic beverage. The same number of drinks may affect an individual differently at various times, depending on the person's mood, weight, the time of day, the amount of food in the stomach, how fast drinks are consumed and type of mixer used in the drink.

If you see that a guest is drinking too much, start a conversation with him or her to slow down consumption, and offer a non-alcoholic drink or one with less alcohol.

MEXICAN LAYER DIP

2 8-oz. pkgs. cream cheese
1 pkg. dry taco seasoning
2 tablespoons milk
1 tablespoon salsa, 2 teaspoons chili powder
1 can refried beans, 1 cup shredded lettuce, chopped green onion, chopped tomato, shredded cheese, tortilla chips
Mix together the first five ingredients. Spread mixture on serving tray. Top with remaining ingredients, chill, serve with chips.

FRESH FRUIT & CHEESE KABOBS

1 8-oz. cream cheese
1/4 cup crumbled blue cheese
1 grated orange peel, 1/3 cup finely chopped nuts
2 fresh oranges/tangerines, peeled, segmented
2 bananas, cut in chunks; 1 apple, cored, sliced; 1/2 cup grapes
Combine cheese and orange peel. Form into 16 1-inch balls; roll in chopped nuts. Chill 30 minutes until firm. To serve, on 6-inch wooden skewers, arrange one cheese ball and an assortment of fruit. Makes 16 appetizers.



TAKE AWAY THE CAR KEYS

As the host of a party or event, you are responsible for the actions of your guests. The host of the party has a civil liability if either a partygoer is hurt or a third person is injured due to alcohol impairment. Remember, one does not have to be heavily intoxicated to be impaired. Impairment can begin with the first drink. Driving skills and abilities are impaired in most people long before they exhibit visible signs of drunkenness.

In Virginia, the legal limit for driving while intoxicated is a blood alcohol content level of 0.08%. If convicted, violators can face expensive fines, the loss of their driver's license and jail time. Virginia's Zero Tolerance Law makes driving under the influence of any amount of alcohol a serious criminal offense for drivers under the age of 21. Prevent underage and irresponsible drinking by being a responsible host.

FACT: The alcohol content is the same in one 12-ounce beer (5% alcohol) as in one 5- to 6-ounce glass of wine (12% alcohol) or a 1.5-ounce glass of liquor (80 proof), even when mixed with non-alcoholic beverages. Each of these is a standard drink.

FACT: Coffee and cold showers do not help someone to sober up — only time can do that. Arrange rides or taxi fare for inebriated guests or allow them to stay overnight.

REMEMBER:
FRIENDS DON'T LET
FRIENDS DRINK & DRIVE



RESPONSIBLE HOSTING



* PLAN FOR SUCCESS

Planning for a successful event requires a tremendous amount of time, effort and energy. Whether hosting a small private gathering or a large charity event, party planners are responsible for making sure the event is not only fun — but also safe!

Ensuring the safety of the Commonwealth's citizens is a common goal of the Virginia Alcohol Safety Action Program (VASAP) and the Virginia Department of Alcoholic Beverage Control (ABC).

HERE'S HOW YOU CAN MAKE A DIFFERENCE:

Did you know that nearly 40 percent of all traffic fatalities in Virginia are alcohol-related? The best defense against alcohol-related accidents is to plan ahead and to provide alternatives that can prevent people from driving under the influence. The intent of this booklet is to offer party and event planners some strategies to plan for a successful event. By following these tips, we hope your event will remain a cherished memory for years to come.

PLAN TO BE RESPONSIBLE



WHEN YOU NEED AN ABC LICENSE:

Depending upon the event and if you are planning to serve alcoholic beverages, you may need a special permit known as a **banquet license**. ABC issues banquet licenses for functions where alcoholic beverages are being sold or dispensed in a public place, where food is being sold or when alcohol is being served on the premises of a club.

Should you have any questions about whether you need a banquet license, please visit the ABC website at www.abc.state.va.us.

HOST RESPONSIBILITIES:

Have a safe event that is fun for everyone by being a responsible host. Do not allow an intoxicated person to purchase or consume alcoholic beverages or to loiter on the premises of your event.

Selling or serving to an underage person is considered one of the most serious ABC violations and is against the law. Do not allow anyone younger than 21 years of age to purchase or consume alcoholic beverages at your event. Do not allow persons of legal age to provide alcoholic beverages to anyone underage. Violating any of these regulations can result in the conviction of a Class 1 Misdemeanor. For more information, please visit the VASAP website at www.vasap.state.va.us.

FACT: Alcoholic beverages purchased for resale must be purchased from licensed wholesalers.

TIP: If your event will involve individuals under 21 years of age, use the stamp or bracelet system to identify underage persons.

FACT: Individuals who sell or serve beer must be at least 18 years old. Bartenders must be at least 21 years old.

ABOUT VASAP

The goal of VASAP is to improve transportation safety by decreasing the incidence of driving under the influence of alcohol or other drugs and thereby reducing the number of alcohol and other drug-related crashes.

VASAP enhances law enforcement efforts, which include equipment and training, to reduce alcohol and drug-related crashes. Working with the prosecutors and the courts, VASAP ensures the efficient processing of those convicted of driving under the influence. VASAP also works with the courts to ensure appropriate probationary requirements of offenders. VASAP is responsible for periodically evaluating local ASAPs to ensure they are servicing communities in an effective, efficient manner. VASAP works diligently to inform the public about the dangers and costs of drinking and driving, as well as the effects of alcohol.

For more information on transportation safety, alcohol prevention and intervention services, contact your local ASAP office:

Alexandria (703) 838-4266	Fairfax (703) 279-2600	Rockbridge (540) 261-6281
Arlington (703) 228-4420	James River (434) 977-3553	Alleghany/Covington (540) 965-0340
Bull Run (703) 369-7979	John Tyler (804) 796-4281	Roanoke City (540) 857-6041
Loudoun County (703) 771-4702	Parham Road (804) 672-1786	Rockingham/Harrisonburg (540) 434-0154
Capital Area (804) 662-7365	Mount Rogers (276) 783-7771	Southeastern Virginia (757) 396-6980
Central Virginia (434) 947-2524	New River Valley (540) 381-7133	Southside Virginia (434) 572-4939
Chesapeake Bay (757) 552-1800	Old Dominion (540) 665-5633	Southwest Virginia (276) 679-9337
Eastern Shore (757) 414-0762	Peninsula (757) 896-6822	Lebanon (757) 889-7615
Dan River (434) 791-5331	Piedmont (434) 392-8920	Tri-River (804) 758-5610
Martinsville (276) 632-2637	Rappahannock (540) 372-3558	Valley (540) 886-5616 (540) 943-4405
District Nine (540) 829-7379	Court-Community Corrections (540) 387-5230	

VISIT VASAP ONLINE:

www.vasap.state.va.us

