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Dram Shop Law/Liability
Statutory or case law provides that a person who serves alcoholic beverages to an intoxicated individual may be liable for the damages caused by such individual. In some states, a server may also be liable for injuries sustained by the intoxicated individual.

(NHTSA, Digest of Impaired Driving and Selected Beverage Control Laws, 24th Edition, August 2007)

Social Host Civil Liability and Minor Traffic Safety

Jiaqi Liang

Introduction

Alcohol is a contributing factor in traffic crash fatalities involving young drivers. A number of strategies have been employed to limit minors' access to alcohol, such as zero tolerance laws¹ and use/lose laws². Social host civil liability is one option many states have tried to restrict the availability of alcohol for minors. Akin to commercial alcohol server responsibility, social host tort law holds the non-commercial alcohol providers liable for the injuries sustained or caused by drinking minors or obviously intoxicated adults. This report describes alcohol involvement³ for young drivers, introduces social host civil liability, and presents the arguments for and against the establishment of social host tort liability.

Problem Statement

Young drivers accounted for about 6.4 percent (i.e., 13.0 million) of the total drivers in 2006 which is a 7.2 percent increase from 1996 (NHTSA, 2007-b). Motor vehicle crashes are the leading cause of death for 15- to 20- year-olds. The number of young drivers, between 15- to 20- years old, has substantially increased in the past decade. Young drivers are overrepresented in traffic crashes in proportion to the number of licensed drivers (MO-DOT, 2009). In 2007, approximately 13 percent of all the drivers involved in fatal

traffic crashes were youth aged from 15 to 20 (NHTSA, 2007-b). According to the records of the Fatality Analysis Reporting System, which is maintained by the U.S. Department of Transportation, The number of drivers under 21 with alcohol involvement in a fatal crash had decreased by over 20 percent from 1982 to 2004 (i.e., 43.7% v. 22.5%), but the alcohol-related fatalities among young drivers remained high (Figure 1).

The drinking circumstance among young drivers in traffic crashes is serious and noteworthy. Among the young drivers who died in motor vehicle crashes in 2007 nationwide, 31 percent had been engaged in drinking (BAC level of .01 or higher) (NHTSA, 2007-b). In 2007, of Missouri fatal traffic crashes, 23 percent involved one or more drivers who were drinking. Alcohol involvement was the second most significant contributing circumstance in fatal traffic crashes among Missouri's young drivers. In 18.6 percent of 2007 fatal traffic crashes, drinking led to the crashes involving young drivers (MO-DOT, 2007) (Figure 2).

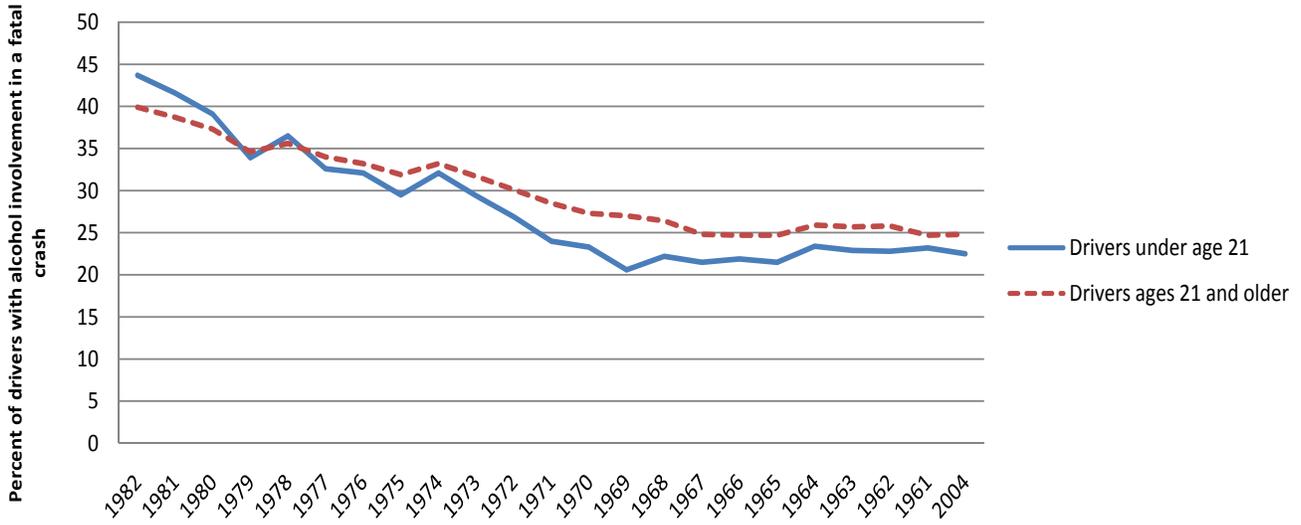
The underage drinking issue has drawn the attention of legislators nationwide. According to the National Conference of State Legislatures, states passed 166 and 129 underage drinking bills respectively in 2006

1. Zero tolerance laws make it illegal for drivers under age 21 to operate a motor vehicle even with a low blood alcohol concentration. Such policies establish a very low legal BAC limit of 0.02 or less for drivers under the legal drinking age of 21 (APIS, 2009). By July 1998, all 50 states and D.C. had such laws in place. If states fail to comply with the zero tolerance law, which was mandated by the National Highway Systems Designation Act of 1995 by October 1995, they would lose federal highway construction funds (Shults et al, 2001).

2. Use/lose laws authorize the enacting states to suspend or revoke the young drivers' driving privileges upon their purchase, possession or consumption of alcoholic beverages (i.e., violation of the minimum legal drinking age law)

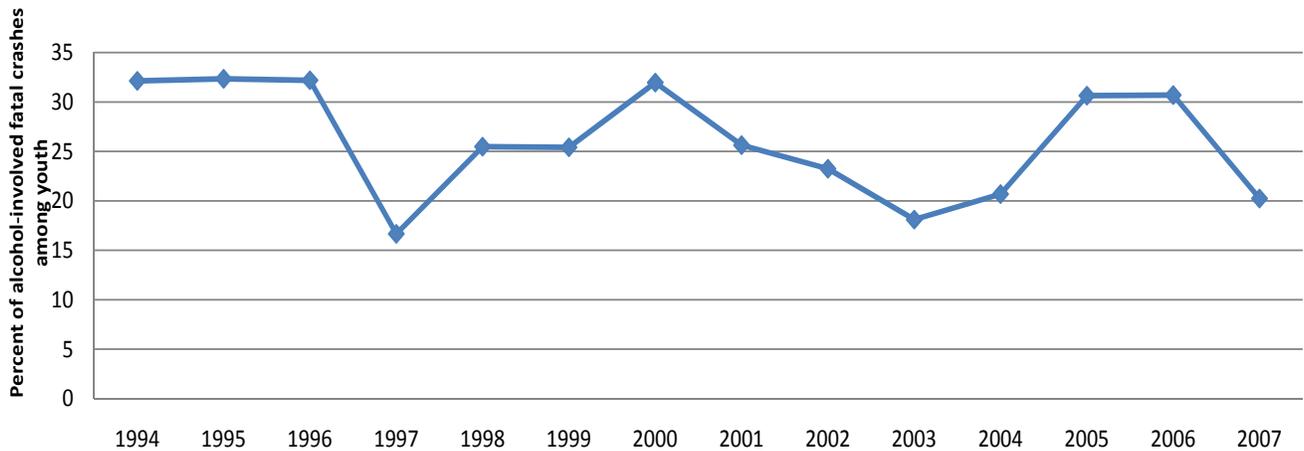
3. The drivers are considered alcohol-involved if their blood alcohol concentration (BAC) was equal to or greater than 0.01 g/dL (CDC, 2002).

Figure 1. Alcohol involvement among young drivers under age 21 and drivers ages 21 and older in fatal traffic crashes, United States, 1982-2004



Note: Data are from the Fatality Analysis Reporting System (FARS) maintained by the National Traffic Safety Administration and National Institute on Alcohol Abuse and Alcoholism 2009
 Source: Alcohol Epidemiologic Data System. Yi, H., Chen, C.M., and Williams, G.D. Surveillance Report #76: Trends in Alcohol-Related Fatal Traffic Crashes, United States, 1982–2004. Bethesda, MD: National Institute on Alcohol Abuse and Alcoholism, Division of Epidemiology and Prevention Research (August 2006)

Figure 2. Percentage of alcohol involvement in fatal motor vehicle crashes among 16 - 20-year-old drivers in Missouri, 1994-2007



Missouri Criminal Social Host Law

“Any owner, occupant, or other person or legal entity with a lawful right to the exclusive use and enjoyment of any property who knowingly allows a person under the age of twenty-one to drink or possess intoxicating liquor or knowingly fails to stop a person under the age of twenty-one from drinking or possessing intoxicating liquor on such property, unless such person allowing the person under the age of twenty-one to drink or possess intoxicating liquor is his or her parent or guardian, is guilty of a class B misdemeanor.”

*Missouri Revised Statutes, Section 311.310;
 2005 Mo. Laws 1st Ex. Sess. H.B. 2*

and 2007 (DeCuir, 2007). The Governors Highway Safety Association also urged broader enactment of social host laws to strengthen underage drinking policies and to eliminate accessibility of alcohol for minors (GHS, 2009).

The Social Host Problem

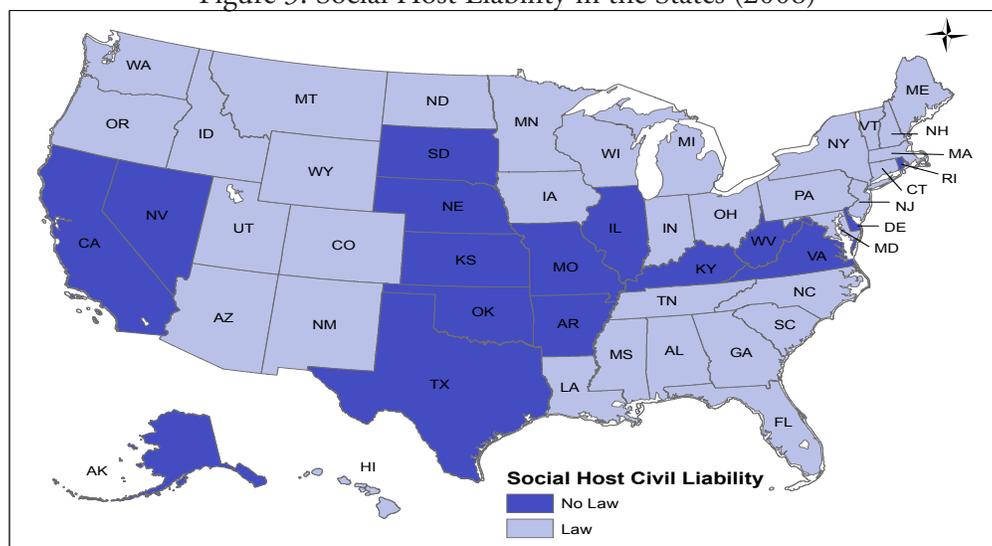
In 2000, a survey of over 8,000 offenders convicted of DUI in Mississippi revealed that respondents most frequently drank at home (Sloan et al, 2000, p.113). Surveys also showed that persons over the age of 21 were the major alcohol sources for three age groups: 46 percent of 9th graders, 60 percent of 12th graders and 68 percent of those aged 18 to 20 (Wagenaar et al, 1996). A 2007 survey in the Silicon Valley of California examining the underage drinking awareness and behaviors suggested that 88 percent of students consumed alcohol at someone else's home; and 35 percent attended a party where students drank. In addition, a survey targeting 13- to 18- year-old teens administered by the American Medical Association (AMA) showed that two out of three teenagers said they were able to get alcohol from their homes without the knowledge of their parents. All cities of Ventura County in California have enacted social host liability ordinances, and it was reported to reduce the incidence of underage drinking parties (MADD, 2006).

What is Social Host Civil Liability?

Host liability for serving intoxicated drinkers may be imposed in up to three ways. Dram shop liability imposes penalties for businesses that serve intoxicated patrons, regardless of age. Criminal social host liability imposes penalties on any persons who serve anyone under the age of twenty-one (see below). Social host civil liability allows civil suits for injury of property damage sustained or caused by minors or adults to whom the social host served alcohol.

Established by legislation or judicial decision, civil liability (i.e., usually in the form of monetary compensation) may be imposed upon non-commercial social hosts who provide alcohol to minors or obviously intoxicated adults for injuries sustained or caused by the minors or adults subsequently. Social host tort liability is an extension from dram shop laws, which hold commercial drinking establishments civilly liable for injuries suffered or caused by the intoxicated patrons they serve. Social host tort liability laws vary from state to state (see below). In 1984, New Jersey, via court decision, was the first state establishing social host liability for injuries caused by the intoxicated guests (*Kelly v. Gwinnell*, 476 A.2d 1219, 1230 (N.J. 1984)). Over two decades, other states have adopted such laws for both minors and adults. Overall, social host tort liability is more stringent for serving minors than adults, in accordance with minimum legal drinking age

Figure 3. Social Host Liability in the States (2008)



Serving a minor:

Alabama (1987) Arizona (1995) Colorado (1991) Connecticut (1988) Georgia (1985) Idaho (1986) Indiana (1984) Iowa (1989) Louisiana (1995) Massachusetts (1986) Michigan (1985) Minnesota (1995) New Hampshire (1995) New Mexico (1986) New Jersey (1984) New York (1989) North Carolina (1992) North Dakota (1994) Ohio (1988) Oregon (1984) Pennsylvania (1994) South Carolina (1985) Vermont (1987) Washington (1984) Wisconsin (1992)

Serving an adult:

Georgia (1985) Idaho (1986) Indiana (1984) New Hampshire (1995) New Mexico (1986) New Jersey (1984) North Carolina (1992) North Dakota (1994) Oregon (1984) Vermont (1987)

Source: (1) Whetten-Goldstein, K., Sloan, F.A., Stout, E., Liang, L. (2000). Civil liability, criminal law, and other policies and alcohol-related motor vehicle fatalities in the United States: 1984-1995. *Accident Analysis and Prevention*, 32, 723-733;

(2) NHTSA (2007-a). Digest of Impaired Driving and Selected Beverage Control Laws. Washington DC: National Highway Traffic Safety Administration (DOT HS 810 827); (3) Mother Against Drunk Driving (MADD) (2006). Get the Full Story on Social Host.

laws and other minor-oriented alcohol policies (Whetten-Goldstein et al, 2000).

As of 2008, 34 states have social host civil liability in statutes or case law (MADD, 2006) (see Figure 3). Missouri does not recognize civil social host liability. In *Harriman v. Smith* 1985, the Missouri Court of Appeals declined to impose civil liability on social hosts in the absence of a social host civil liability law. Instead, it concluded that “the legislature should be the determinant of any such duty and its parameters” on the grounds that the legislature “has the requisite sophisticated tools for gathering data, conducting studies, receiving public opinion, and, finally, implementing the policy in carefully expressed and well-defined legislation” (McCarter, 2005). In general, Missouri’s public policy is that “the consumption, not the furnishing, of alcohol beverages is the proximate cause of injuries inflicted by intoxicated persons” (McCarter, 2005).

Arguments for Social Host Tort Liability

1. It reduces alcohol availability to minors. Research studies demonstrate that in the commercial setting, dram shop liability, inspection of IDs and other commercial server-oriented alcohol policies make the on-premise consumption much harder; however, it is fairly easy for minors to get access to alcohol in a non-commercial setting, and the lack of social host civil liability leaves a significant legal loophole.

2. It effectively reduces motor vehicle fatalities and deters drinking-driving behavior. Social host liability was found to be successful in reducing self-reported behaviors of drinking-driving and binge drinking (Sloan et al, 2000, p.228; Stout et al, 2000). Given their similar responsibility in nature and limited studies conducted to examine the direct impacts of social host liability, the effect of dram shop laws may be a useful indicator. Numerous studies have shown that dram shop laws are one of the most effective countermeasures in deterring drinking-driving behavior (Chaloupka et al, 1993; Stout et al, 2000; Whetten-Goldstein et al, 2000; Young et al, 2000).

3. It increases the hosts’ perception and vigilance of underage drinking. The Silicon Valley survey also reported that around 46 percent of parents were not clear about their responsibility if someone else’s child was found drinking in their home (MADD, 2006). An AMA survey in 2006 indicated that parents were not only an easily available alcohol source for their own kids, but also for their kids’ teen friends. Moreover, hosts self-reported to rarely stop serving their guests alcohol at a party (MADD, 2006). Some advocates argued that broadening third-party liability to social hosts could be based on theories of dram shop laws and common law negligence⁴. As the proponents of social host liability in the

Harriman v. Smith stated, “a person who creates a dangerous condition on a public roadway is liable for the foreseeable injuries caused thereby.”⁵ It is not particularly burdensome for social hosts to know how much alcohol their guests have consumed, whether they are intoxicated upon departure and how they would get home. Considering the potential civil liability, social hosts may undertake supervision responsibly (Jacobs, 1989, p.143). In New Jersey’s landmark case *Kelly v. Gwinnell*, the court “believe that the added assurance of just compensation to the victims of drunken driving as well as the added deterrent effect of the rule on such driving outweigh the importance of those other values.”⁶

4. Public opinion is supportive of tightening underage drinking laws. Wagenaar et al (2000) reported that 80 percent of respondents were supportive of increasing penalties for an adult who illegally supplies alcohol to minors. A recent survey that centered specifically on attitudes towards social host liability administered by Trusted Choice, an association of insurance and financial service firms, reported wide support for liability on both commercial and non-commercial alcohol providers in several question categories among total respondents and party hosts (MADD, 2006).

Arguments against Social Host Tort Liability

1. Liability on social alcohol providers undermines the individual responsibility of the alcohol consumers (Chamberlian et al, 2004). The opponents of third-party liability maintain that the drinkers would be more likely to develop moral hazard and consume more if they know someone else would bear the costs. Under a broader liability policy, even the intoxicated guests are allowed to sue their hosts, consequently individual responsibility and self-precaution could be minimized to a great extent. In *Olsen v. Copeland*⁷, the Wisconsin Supreme Court expressed its concern about the diminished individual responsibility resulting from a dispenser’s liability for the intoxicated guests.

2. Legislatures or courts are not supposed to interfere with private domain (Diamond et al, 2000; Whetten-Goldstein et al, 2000). Being criticized for invading the private interest is one of the reasons for legislatures and courts’ reluctance to take actions in social host tort liability. In Washington State’s case *Reynolds v. Hicks*⁸, the court said “the implications of social host liability are so much wider sweeping and unpredictable in nature than are the

4. *Harriman v. Smith*, 697 S.W.2d 219 (Missouri 1985)

5. *Ibid*

6. *Kelly v. Gwinnell*, 476 A.2d 1219, 1230 (N.J. 1984)

7. *Olsen v. Copeland*, 280 N.W. 2d. 178 (Wis. 1979)

8. *Reynolds v. Hicks*, 951 P.2d 761, 767 (Wash. 1998)

implications of commercial host liability. While liability for commercial providers affects only a narrow slice of our populations, social host liability would touch most adults in the state on a frequent basis.”

3. Theories of commercial alcohol server liability cannot simply apply to non-business alcohol providers because of their “inherent difference”. As opposed to a dram shop law, a social host law “creates a standard difficult to apply” (Diamond et al, 2000). Compared to commercial servers, average social hosts do not have experience or expertise to identify the “safe” level of alcohol minors can consume. Business vendors realize pecuniary profit from selling alcohol while social hosts do not earn income from giving their guests drinks. In addition, most establishment owners have insurance to cover partial business losses, but most private citizens do not have such insurance. Another distinction lies in “governmental interest, which supports the statutory requirement that business vendors of alcohol be licensed”⁹.

4. The deterrence effect of social host liability is inconclusive (Chamberlian et al, 2004). Social host liability had not been established until the 1980s, and empirical evidence of its efficacy is limited, scattered and unsystematic. Opponents argue that policymakers should be wary of putting this policy on the agenda because a proliferation of social host liability would pose profoundly far-reaching impact on people’s behaviors, social norms and personal interaction.

Conclusion

As more youth initiate their drinking at an early age and studies show that they can get access to alcohol easier than assumed, multifaceted countermeasures are needed to avert this situation. Given the analysis of its nature and advantages, establishing social host civil liability would be one of the policy options to limit the alcohol availability to minors, deter drinking-driving behavior and enhance adults’ vigilance over underage drinking. However, policymakers should be aware of some potential unintended consequences derived from this policy: potentially undermining the drinkers’ individual responsibility and invading people’s private lives.

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