

The Law -- On Your Side: Illinois Citizens Now Exposed to Liability for Serving Alcohol to Minors

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Daniel Kotin, a highly successful personal injury lawyer at the legendary Chicago law firm of Corboy & Demetrio, has written this article on serving alcohol to minors in order to inform the public and provide a safer community in which to raise our children.

For more than 130 years, Illinois rejected the concept of social host liability. Specifically, a person who provided alcohol to a guest could not be legally responsible for damages caused when that guest became intoxicated and ran over someone with a car or beat someone up in a drunken rage. This was black letter law regardless of the circumstances surrounding the drinking -- even if the guest was a minor. But in the past couple of years, the Illinois legislature has changed the law. Now, any adult who provides alcohol (or any intoxicating substance) to a minor is liable for any damages caused by the intoxication of that minor -- even if the intoxicated minor injures himself or herself. Bottom line: Although it used to be an acceptable display of trust and recognition of maturity for Illinois parents to provide beer to teenage children and their friends, such a gesture now would make that parent strictly liable for any injuries that result.

The Original Dram Shop Act

For half a century, Illinois had held to the position that there was no viable lawsuit for injuries arising out of the sale or gift of alcoholic beverages. The rationale behind this belief was that the drinking of the alcohol, not the furnishing of it, was the cause of intoxication and any resulting injury. Courts believed that any change in this rule would be the responsibility of the Illinois legislature to enact a law.

Then in 1872, in response to the temperance and prohibition movement which was sweeping the nation, Illinois passed its original Dram Shop Act. This Act imposed liability upon any liquor store, tavern, or restaurant that sold alcohol to a person who became

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intoxicated and injured someone else. Liability under this statute was very restricted and very limited. The intent of these limitations was to keep dram shop insurance affordable, thus allowing restaurants and taverns to stay in business.

As it stands right now in 2009, the most an injured person can recover against a licensed provider of alcohol is \$58,652.33 for his or her personal injuries and \$71,686.18 for any loss of support to that person's family. (These seemingly random dollar limits are modified each year based upon a calculation of the consumer price index in Illinois.) Based upon this statute, if a tavern were to provide someone with so much alcohol as to make him drunk and that person then drove his car through a red light and into a pedestrian crossing in the crosswalk, that injured pedestrian's claim against the tavern would be limited to \$58,652.33, even if his or her medical bills were in the millions of dollars. As a result of these low dollar limits and the fact that most of the recovery would have to be reimbursed to health insurance companies, many seriously injured victims of drunks do not bother pursuing dram shop actions. Similarly, many top level law firms think twice before getting involved in complicated and expensive dram shop lawsuits.

Another significant limitation of the Dram Shop Act is that it excludes any recovery for someone who is "complicit" in the drinking. Specifically, if a person gets drunk at a bar, crashes his car, and injures his passenger, that passenger cannot recover in a lawsuit against the bar if he or she was at the bar with the driver and contributed to the intoxication.

No Social Host Liability

Regardless of its limitations and exclusions, dram shop liability has existed in Illinois for decades and has, at a minimum, reminded restaurants and taverns to exercise caution in providing alcohol to over-served patrons. Social host liability, on the other hand, until recently, simply did not exist.

Social host liability is a concept which imposes a duty on citizens who give alcohol to others, free of charge, to exercise care to avoid allowing their guest to become drunk. A homeowner who threw a party could not be legally responsible for damages caused by a drunken guest, no matter how much alcohol was provided to that guest, even if the guest was 15-years-old. It was the person who drank the alcohol who was responsible for any harm, not the person who provided it.

For decades, this steadfast refusal to recognize any form of social host liability seemed out of touch with our society's standards which emphasize the importance of personal responsibility. In 1995, after a couple of appellate courts concluded that adults in this state should be liable for serving alcohol to minors who subsequently were involved in fatal car crashes, our state Supreme Court specifically said "no". The late Justice and former Chicago mayor Michael Bilandic concluded that it was not up to our courts to determine whether adults should be liable for providing alcohol to minors. Specifically, he wrote, "The question of whether, and to what extent, social host liability should be imposed in Illinois is better answered by the legislature." For more than 150 years, the Illinois legislature said nothing on the issue. That all changed in October 2004.

The Drug or Alcohol Impaired Minor Responsibility Act

Most of us recall the horrific video of the May 4, 2003 high school hazing ritual at a powder puff football game between junior and senior girls at Glenbrook North High School. The drunken bloody brawl resulted in five girls being hospitalized, numerous suspensions and expulsions from school, and countless television and newspaper pieces questioning the responsibility of parents who allow this activity to take place. Perhaps most importantly, it contributed to the passage of the Drug or Alcohol Impaired Minor Responsibility Act which became effective on October 1, 2004. Finally, under this Act, any adult who intentionally supplies alcohol or drugs to minors and causes intoxication is strictly liable for any injuries or deaths which result from the intoxication. It is a very expansive statute which provides for wide ranging liability and almost limitless damages.

Under this new statute, if a parent in our community serves alcohol to their teenage child and friends and one of the friends becomes intoxicated, drives his car into a tree and is killed, the family of the deceased friend will have a wrongful death action against the parent for providing alcohol to a minor. Under the statute, that deceased child's family can also recover attorney's fees and punitive damages designed to punish the adult for providing the alcohol which lead to the tragedy. The statute also covers innocent victims of the intoxication, like the other motorist who is injured when the intoxicated teen crosses the center line and collides with him.

The message of this new statute is clear: Adults in this state simply can no longer provide alcohol to minors. The days of the "cool parents" are in the past. The concept of "teaching my kids to drink responsibly" is no longer acceptable. The mandate imposed by the strict liability in the statute is clear: Underage drinking cannot continue and adults who facilitate it will be held responsible for any harm that is caused.

To emphasize the responsibility placed on adults in the statute, the legislature has excluded the contributory negligence of the minor from consideration. This means that the adult who provides alcohol to the minor who is ultimately injured is fully responsible for those injuries regardless of how foolish or negligent the drunken minor may have been. Apparently, it is understood and expected that children will not act responsibly, particularly when intoxicated. With this in mind, the minor's own negligence is the responsibility of the adult who provided the drinks.

What is meant by "supplying alcohol"? Some nervous parents have asked what it means to provide alcohol to minors. Do they actually have to hand the bottle of tequila to the teenagers, or can they be held liable for simply leaving the liquor cabinet unlocked while away from the house?

The legislature seemed to address this concern in its wording of the statute. In a residential setting, a social host must "wilfully supply" the alcohol to the minors. This language seems to exclude liability against a parent whose teenagers and friends sneak alcohol from the liquor cabinet. In a nonresidential setting, however, the adult can be liable for simply "permitting" the consumption of alcohol on the premises. There is no explanation of what is meant by a nonresidential location, but the forest preserve where the

Glenbrook North powder puff game took place is probably a good example.

In the past 4 years, several lawsuits have been filed and claims have been paid pursuant to the social host liability statute. It is only a matter of time before adults in this state begin to feel the financial consequences of providing alcohol to minors and change their behavior. It is a law which was long overdue, and which should ultimately lead to more responsible citizens and a safer community in which to raise our children.

*The information contained in this article should not be construed to be formal legal advice, nor the formation of an attorney-client relationship. Readers should not act or rely upon any information contained in this article and should always seek the advice of an attorney in the reader's state.

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