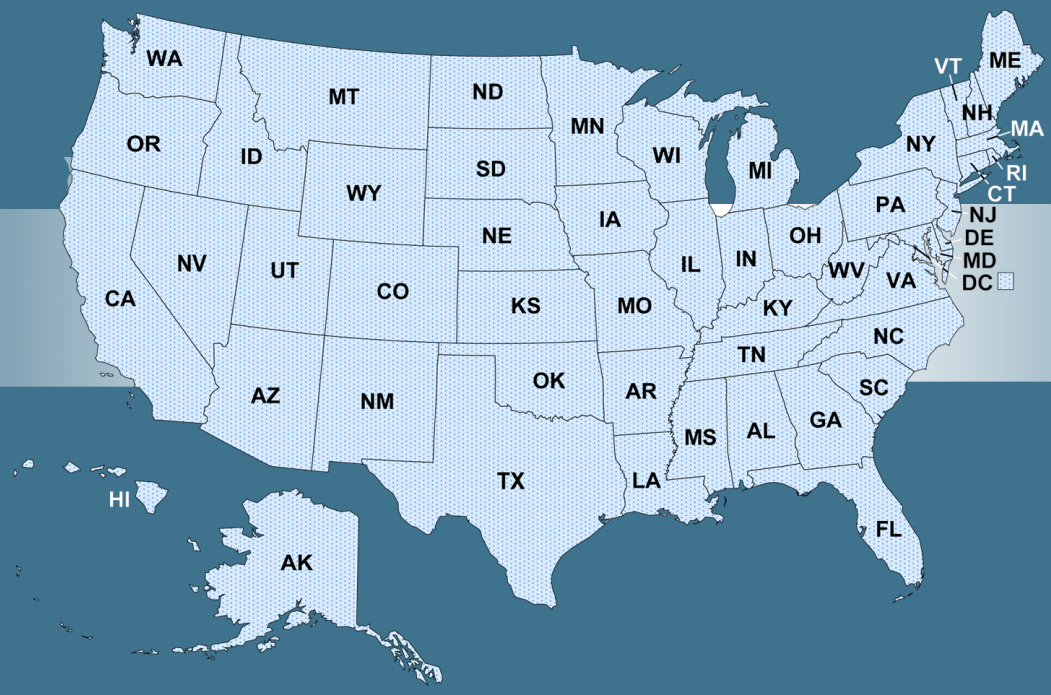
STATE PERFORMANCE & BEST PRACTICES

for the Prevention and Reduction of Underage Drinking

2018



POLICY SUMMARY:

Social Host Liability

SAMHSA

Substance Abuse and Mental Health Services Administration

The *State Performance and Best Practices* is required by the Sober Truth on Preventing (STOP) Underage Drinking Act (Pub. L. 109-422), which was enacted by Congress in 2006 and reauthorized in December 2016 as part of the 21st Century Cures Act (Pub. L. 114-255). The STOP Act directs the Secretary of the Department of Health and Human Services (HHS), working with the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD), to develop a set of performance measures for evaluating the states' use of best practices in preventing underage drinking, and to consider a set of enumerated categories in doing so. The STOP Act also requires an annual report on each state's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking.

This *State Performance and Best Practices*, and the 51 individual State Reports, were prepared by the ICCPUD, which is chaired by the Assistant Secretary for Mental Health and Substance Use, U.S. Department of Health and Human Services.

Time period covered by the 2018 *State Performance and Best Practices:* The 2018 version primarily includes data from calendar year 2017. The data on state legal policies reflects the state of the law as of January 1, 2017. The state survey data was collected in 2017, and is drawn from the most recent 12-month period in which the states maintained the data.

Recommended Citation

U.S. Department of Health and Human Services (HHS), Substance Abuse and Mental Health Services Administration (SAMHSA), Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD). (2018). *State Performance and Best Practices for the Prevention and Reduction of Underage Drinking.*

Social Host Liability

Policy Description

Social host liability refers to the civil liability that noncommercial alcohol providers face for injuries or damages caused by their intoxicated or underage drinking guests. The analysis here does not address social host liability for serving adult guests.

The typical factual scenario in legal cases arising from social host liability involves an underage drinking party at which the party host furnishes alcohol to a minor who, in turn, injures a third party in an alcohol-related incident (often a motor vehicle crash). In states with social host liability, injured third parties ("plaintiffs") may be able to sue social hosts (as well as the minor who caused the crash) for monetary damages. Liability comes into play only if injured private citizens file lawsuits. The state's role is to provide a forum for such lawsuits; the state does not impose social host-related penalties directly. (As discussed below, this distinguishes social host liability from underage furnishing and host party policies, which can result in criminal liability imposed by the state and are discussed under "Furnishing Alcohol to Minors" above and "Hosting Underage Drinking Parties" below.)

Social host liability is closely related to the underage furnishing and host party policies, but the three are distinct. Underage furnishing policies and host party policies allow the state to impose fines or other punishment upon social hosts who furnish alcohol to minors or allow underage drinking parties on their property. In contrast, social host liability policies allow injured parties to file lawsuits against social hosts for damages stemming from the same conduct. Social host liability and dram shop liability (presented elsewhere in this report) are identical policies except that the former involves lawsuits brought against noncommercial alcohol retailers, and the latter involves lawsuits filed against commercial alcohol providers.

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

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

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

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

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

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

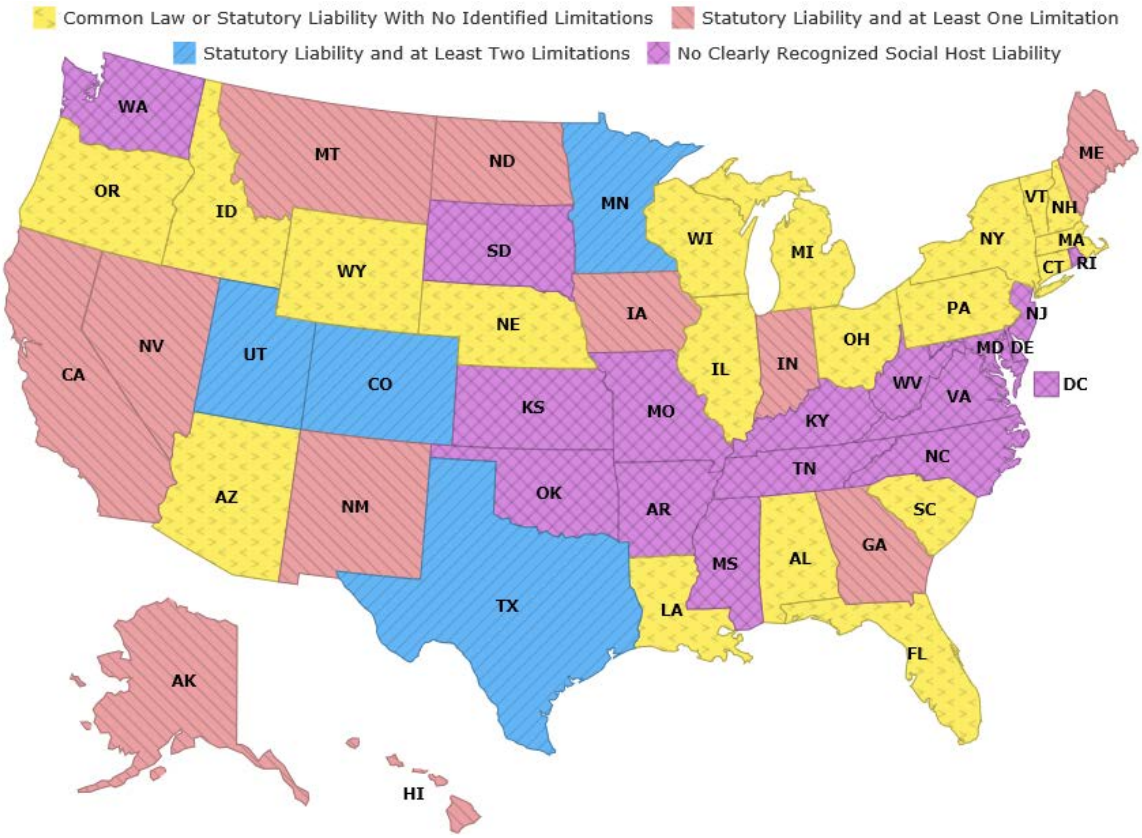
1. Limitations on damages: Statutes may impose statutory caps on the total dollar amount that plaintiffs may recover through social host lawsuits.
2. Limitations on who may be sued: Potential defendants may be limited to persons above a certain age.
3. Limitations on elements or standards of proof: Statutes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

These limitations can limit the circumstances that can give rise to liability or greatly diminish plaintiffs' chances of prevailing in a social host liability lawsuit, thus reducing the likelihood of a lawsuit being filed. Additional restrictions may also apply. For example, many states do not allow "first-party claims," cases brought by the person who was furnished alcohol for his or her own injuries. These additional limitations are not tracked here.

Status of Social Host Liability

As of January 1, 2017, 34 states impose social host liability through statute or common law; 14 states and the District of Columbia do not impose social host liability (see Exhibit I.31). In two states, there is no statutory liability, and common law liability is unclear. Nineteen states have either common law liability or statutory social host liability with no identified limitations. The remaining states with social host liability impose one or more limits on statutory liability, including limits on the damages that may be recovered, limits on who may be sued, and standards of proof of wrongdoing that are stricter than usual negligence standards.

Exhibit I.31: Common Law/Statutory Social Host Liability as of January 1, 2017



Trends in Social Host Liability for Furnishing Alcohol to a Minor

In the years between 2009 and 2017, the number of states that permit social host liability increased by two.

Data Sources and Citations

Legal research and data collection for this topic are planned and managed by SAMHSA and conducted under contract with The CDM Group, Inc. For more information, including definitions of the variables for this policy, contact underagedrinking@samhsa.gov.

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