

FAST SOCIAL HOST FACTS LIABILITY

Lock up the Liquor

New Mexico's felony law for providing alcohol to minors is seeing stepped-up education and enforcement in retail alcohol establishments, making it harder for kids to obtain alcohol in stores and bars. This has moved the problem of underage drinking into domestic settings such as teen home parties. Seven out of 10 high school students who drink do so either at their friends' parents' home (51%) or their own parents' home (20%).¹ The move from retail to domestic settings is sometimes aided by parents with good intentions-- to keep kids at home and out of trouble.

Good parental intentions are not supported by science or the law, however: young people who begin drinking before age 15 are five times as likely to develop alcohol dependence than those who begin drinking at 21.² In addition, parents who serve or give alcohol to their children's friends under the age of 21 are committing a felony.

Seven out of ten high school students who drink do so either at their friends' parents' home (51%) or their own parents' home (20%).

New Mexico has stiff penalties for providing alcohol to minors:³

- **Criminal Prosecutions:** It is a felony for adults to provide alcohol to minors who are not their own children. Minors 18-21 years of age can be charged with misdemeanor possession of alcohol⁴ as well as the felony for providing alcohol to another minor.
- **Civil Lawsuits:** Adults 18 and older can be sued civilly for damages resulting from giving minors alcohol. Under New Mexico law, if you gratuitously provide alcoholic beverages to a guest in a social setting, you can be civilly liable for damages to any person for bodily injury, death or property damage due to the intoxication of the guest *IF the beverages were provided, "recklessly in disregard of the rights of others, including the social guest."*⁵ This law applies to any guest without age limitations.
- **Social Host Statutes and Ordinances:**⁶ Some states outside New Mexico have passed laws that prohibit persons from allowing an underage drinking gathering to occur in their home or on their private property, even if they do not provide the underage persons with the alcohol itself. In addition, cities and counties across the country, including those in New Mexico, are beginning to consider enacting local ordinances

1 New Mexico Youth Risk and Resiliency Survey (YRRS): 2005 Report of State Results. New Mexico Departments of Health & Public Education; Santa Fe, NM, Green, D., Peñalosa, L.J., Chrisp, E., Dillon, M., Cassell, C.M., Tsinajinnie, E. Rinehart, J. & Ortega, W. (2006) page 24, online at <http://hsc.unm.edu/chpdp/Assets/Projects/yrrs/2005%20nm%20yrrs%20statewide%20report%20final.pdf>

2 The NSDUH Report: Alcohol Dependence or Abuse and Age at First Use -- SAMHSA's National Survey on Drug Use & Health

3 Section 60-7B-1A and F, New Mexico Statutes Annotated. "Provide alcohol" means any of the following: sell, serve or give, permit a minor to consume on a licensed premises, buy for or procure the sale or service of, deliver or aid or assist a minor to buy, procure or be served with alcoholic beverages.

4 Section 60-7B-1A and F, New Mexico Statutes Annotated.

5 41-11-1 New Mexico Statutes Annotated, *Tort Liability for Alcoholic Sales or Service*. Youth and inexperience make misuse of alcohol especially likely and therefore more foreseeable when the drinker is under the age of twenty-one. Giving alcohol to a minor (under 21) is a felony, and could also be considered a reckless act.

6 Statutes are state laws and ordinances are city or county laws.

to curtail irresponsible social hosting, especially with regard to minors. One model social host ordinance developed with assistance from the Pacific Institute for Research and Evaluation provides a way for a county or city to charge social hosts (including tenants) and/or landowners (including landlords) for the recovery of specific costs associated with providing law enforcement, fire or other emergency services on multiple occasions to the scene of a loud or unruly party where alcohol is being served to or consumed by minors.⁷ This recovery of costs is a civil matter and therefore does not require the standard of proof "beyond a reasonable doubt" associated with criminal proceedings.

- **Nuisance Abatement Ordinances:** Currently, Albuquerque's Party Patrol uses the civil provisions of Albuquerque's general nuisance abatement ordinance when minors are found drinking at loud or unruly parties.⁸ There are two separate actions that can be taken under this ordinance. The first is a criminal action against the person who let the nuisance happen-- an owner, manager, tenant, lessee, occupant. Persons who were unaware of the problem and take care of it are not charged with the offense.

The second type of action is civil and remedial and is an action against the property itself. The purpose of this second action is not to punish but to abate public nuisances by removing the property from criminal use, to require that profits from criminal use be removed from criminals and to make property owners vigilant in preventing public nuisances on their property.⁹ The ordinance specifically describes the following as illegal activity: "*selling, serving, giving away, disposing of, exchanging, delivering, procuring, possessing or permitting the sale of alcoholic beverages to, for or by any person under lawful age or to an intoxicated person.*"¹⁰ Penalties include fines, costs temporary restraining orders, civil judgments, permanent injunctions and even the possibility of seizure and sale of the property¹¹ when there is a pattern of calls for the police to a particular address.

- **Keg Registration:** New Mexico requires anyone who buys a keg of beer to provide their name, address and date of birth to the retailer, who records this information together with the control number and the date of purchase for every keg sold.¹² This information is made available to law enforcement officials upon request. Social hosts who buy kegs of beer that turn up at underage drinking parties may find officers knocking at their door asking questions. This information can be used in both criminal prosecutions and civil lawsuits against social hosts.

What Parents and Communities Can Do:

- Don't provide alcohol to anyone under 21- it's against the law.
- Get educated about alcohol and the developing teen brain. Know that youth who start drinking before the age of 15 are five times as likely to develop alcohol problems as adults.
- If you hear about a party where alcohol is being served to minors, report it to authorities.
- If your local police department isn't active in curbing underage drinking, go with other concerned parents to talk to the chief to find out why. Find out what you can do to help.
- If your teen has a party, be at home.
- Don't let your teen attend parties where no responsible adults are present.
- Get other parents onboard- talk to the parents of your kids' friends about this issue and get their agreement not to provide alcohol to minors.
- Help teens plan alcohol-free events or help your kids plan alcohol free events in your home. Enlist the help of other parents.

7 See for instance, *Model Social Host Liability Ordinance with Legal Commentary*, Center for the Study of Law and Enforcement Policy, Pacific Institute for Research and Evaluation, Ventura, CA: Ventura County Behavioral Health Department Publication, 2005 at <http://www.venturacountylimits.org/>

8 11-1-1-1 et seq. Albuquerque Code of Ordinances

9 Subpart C: Civil Abatement of Public Nuisance Offenses; in Rem Proceedings, Section 11-11-20(A), Intent, Albuquerque Revised Ordinances.

10 11-1-1-3 DEFINITIONS, Revised Ordinances of Albuquerque.

11 Section 11-1-1-20 Intent, Revised Ordinances of Albuquerque. House seizure and forfeiture under this ordinance is not a common response because homeowners generally take care of the problem without a seizure action being required.

12 60-7B-12. Beer kegs; labeling; notice, New Mexico Statutes Annotated. A "keg" is a package of beer containing more than six gallons of beer at the time of sale.



Published June, 2008 by the
New Mexico Department of Transportation Traffic Safety Bureau,
and the Institute of Public Law, University of New Mexico School of Law



Institute of Public Law