



# WHEN BEING TOO SOCIAL IS ANTI-SOCIAL

**O**NCE, BEING CALLED A SOCIAL HOST WAS A COMPLIMENT on your party planning skills. Not anymore.

Now, if you're lucky, it means you're *only* Monday's gossip at the commuter train platform and the grocery check-out line. If you're not lucky, it might mean battling a multi-million dollar lawsuit.

Who is a Social Host and how can you avoid becoming one? If you're a parent with teens, it's not that easy to avoid. In brief, if you're arrested on a Social Host charge, it means you've been accused of *allowing* teens to drink in your home. Not *buying* alcohol for teens or *servicing* alcohol to teens; just not doing enough to *prevent* them from drinking in your home or not stopping them from drinking once you've discovered them doing so.

Hotter than macarons, and available in as many flavors, Social Host Laws have been popping up across the country, zip code by zip code, ensnaring both innocents and law-breakers. Connecticut has a state version; New York State doesn't, although Westchester, Nassau and Suffolk counties do.

At first glance, Social Host Laws in our area are seemingly simple affairs. In the four counties of Fairfield, Westchester, Nassau and Suffolk, the first offense is either an infraction or a violation. You pay a fine from \$250 to \$500 and there's no criminal record. For

*By H.M. Epstein*

additional offenses, fines can rise to \$1,000 and up to a year of jail time gets added into the mix. Only Westchester's law applies solely to adults twenty-one and older. On Long Island, anyone over eighteen can get arrested and in Connecticut there's no limit on age.

Not so simple, and far more consequential, is the potential for six or seven-figure civil lawsuits if you're successfully charged as a Social Host and anyone who had been in your home gets injured or injures someone else. In April 2011, a couple from Dix Hills, Long Island hosted a party for their daughter. The kids drank. According to the party guests' statements to the police, they drank a lot. As we go to press, over a year after the party, Robert and Lorri Gelb are still fighting the Social Host Law charges. It's not because they can't afford the \$500 in fines for a first offense. It's probably because Taylor Ann Cavaliere, a popular 16 year old,

was legal for most of us to drink at 18. Prom drinking is ubiquitous, in movies like *American Pie* and *Prom Night*, or on TV shows, like every episode of *Gossip Girl*, including the one with two proms; or *Family Guy's* prom episode when Brian, the dog, gets snookered; even *Glee* has a prom episode where Puckerman spikes the punch. With concerns about inexperienced juniors and seniors trying to cram a year's worth of alcohol into one night of bingeing, many high schools offer mandatory school bus transportation to and from prom, with limo companies kicking kids curbside if they get "too drunk." Some area parents have chosen to ship the party to beach houses in the Hamptons or the Jersey shore towns.

The police in those areas are ready for them. Detective Lieutenant Chris Anderson of the East Hampton Precinct says they know which school districts are celebrating prom on any

Renowned New York City criminal defense attorney, Marvin Raskin, called the beach house concept "just parental stupidity." While he recognizes that "reasonable" parents know that their kids will probably drink, if the parent pays for a location for after-prom or a post-graduation event, once the kids "have the imprimatur of the parent, the liability extends to the parent." Finally, Raskin says, confirming my suspicions that the security guards don't offer legal protection, "any facade of hiring a security person to give them instructions of the sort... just described is a fairy tale in the mind of the parents."

Social Host Laws, like fairy tales, may have a moral, but they're as controversial as the activity they criminalize for four reasons.

**1. Guilt is irrelevant.** Social Host Laws were created when it became too difficult to prove who provided the alcohol for a

## FAR MORE CONSEQUENTIAL IS THE POTENTIAL FOR SIX OR SEVEN-FIGURE CIVIL LAWSUITS IF YOU'RE SUCCESSFULLY CHARGED AS A SOCIAL HOST AND ANYONE WHO HAD BEEN IN YOUR HOME GETS INJURED OR INJURES SOMEONE ELSE.

staggered away from the house and onto a busy road where she was killed by a car. The driver was sober and wasn't charged. A convenience store clerk who sold the liquor to the kids was also arrested.

Your homeowner's insurance policy won't cover the costs if you lose the case. If you're convicted of a misdemeanor associated with underage drinking, you can also lose your professional license; that includes doctors, lawyers, dentists, teachers, and engineers. If the press makes you look disreputable, it can impact custody arrangements for divorced parents or parental rights if you have younger children at home.

What's a parent to do to protect her family and home? How about export the problem?

We all know the intense pressure kids feel to turn prom night into a binge party weekend. Parents' highly romanticized (or traumatized) memories of prom include alcohol because it

given day and which rentals are most likely being used. "Any police officer in any given jurisdiction has an obligation to enforce and ensure underage minors who are engaging in what can be deemed as adult activities... to step in and ensure that the activities stop," he says.

Recently, a group of Westchester-area parents attending a community coalition meeting were shocked to learn that the laws are more severe in the beach communities where their kids plan to celebrate after-prom. One parent volunteered that security guards had been hired to keep the kids from drinking "too much." Anderson scoffed at the idea of security guards, saying their job was to protect the house from damage, not protect the kids. Of course, if the teens do get too drunk and start to damage the house, the security guards have three choices: kick them out, call the police or call the ambulance service if they're out of control. Is that what you had in mind?

group of underage drinkers. Frustrated law enforcement complained they knew who the bad guys were but they couldn't do anything about it. So, Social Host Laws have much simpler requirements than other alcohol beverage control laws: you're liable if your name is on the lease or the deed or if you sent out the invitations. That makes the concept of "innocent until proven guilty" irrelevant. It's now the homeowner's responsibility to *prevent* any underage drinking. It's a difficult standard to live up to, even for involved, caring parents. This is the main reason so many upstanding citizens have been charged under this law across the country: doctors, teachers, school board members, town board members, state representatives, even a Chief of Police and a member of a community coalition advocating for tighter restrictions.

That may be true of Connecticut's law. At a recent public hearing on proposed revisions

to the state's Social Host Law, the Criminal Justice Division stated that the *current* Social Host Law makes parents liable even if they're not present in the house when police find teens drinking. In fact, the testimony specifically suggests parents are liable even if "the parent leaves and goes on vacation." Does that mean that physical presence, written and/or spoken permission are no longer the legal standard of proof that the host was aware underage drinking took place?

**2. They may be unconstitutional.** The Illinois Supreme Court overturned the state's Social Host Law in 2002 because it was considered "unconstitutionally vague." In February 2012, Massachusetts' Supreme Court rejected a clause of the state's civil law that applied to social hosts under the age of 21. In Minnesota and elsewhere, there have been challenges to local ordinances for being unconstitutionally vague. Drafting state statutes is a complex and highly supervised activity while local ordinances are often copies of what the town council up the road did in their community. The result can be local ordinances which are excessively broad, poorly drafted and open to interpretation.

The county laws for Westchester, Nassau and Suffolk were carefully written to avoid being vague. Nearly every term is defined and some – but not an exhaustive list of – suggested steps to avoid prosecution are spelled out.

That's not true for Connecticut's Social Host Law. General terms, including "alcohol," "minor" and "persons" are defined at the top of the Liquor Control Act, but the key phrases aren't defined anywhere in the statutes, including the actions that make you liable and the actions that keep you from being liable. Usually, state laws are under more scrutiny than local ordinances, which means a misstep at the state level will be challenged more quickly.

**3. Overly broad laws lead to arbitrary enforcement.** Constitutional law identifies the lack of "explicit standards for those who apply it" as one of the major paths to "encouraging arbitrary and discriminatory enforcement." When a law is as broad as most Social Host Laws are, the sheriff at your door has to interpret the law as well as enforce it. That can easily translate into inconsistent and injudicious enforcement and favoritism.

On Long Island, Nassau and Suffolk Counties passed identical versions of the law, with the intention of presenting a singular

Island-wide voice to stop teen drinking parties. However, according to an award-winning investigative report entitled "The Social Host Project" by Lauren Cioffi, who reported on the law for her senior project as a Stony Brook University student, the two counties enforced the law very differently. Nassau County police charged eight times as many people as Social Hosts as Suffolk County did between 2007 and 2010. Why the discrepancy? In Nassau County, Cioffi reported, appearances counted. The presence of empty alcohol bottles in the same space as minors led to charges. Suffolk County police would only enforce the law if they witnessed minors drinking alcohol or could provide solid proof, even if their "gut" told them otherwise. When laws are too broadly written, the interpretation is left in the hands of local police.

**4. Mission creep.** Social Host Laws were originally conceived to catch permissive parents and predatory grownups. However, most older versions have broadened the definition of a Social Host from *adult* to *person*, and newer versions copied them. When the law applies to *adults*, it's defined as 21 and older. Adults, who are considered mature enough to make good decisions about alcohol or face the legal consequences, seem to be appropriate targets if they don't behave responsibly.

However, when the law says *person*, as Connecticut's law does, it's defined as "any natural individual or group of individuals." That can mean your 17 year old, the hockey coaching staff or you. When the law applies to any age younger than 21, as it does on Long Island, we penalize the same youth we consider too immature to handle drinking, for not handling drinking responsibly. Statistically, in college communities across the country, we find excessive enforcement when compared to the communities adjacent. While this has not yet been studied or proven so in New York or Connecticut, what other reason can there be for expanding the definition of liability to include children?

The current Connecticut Social Host Law is so poorly written, many in law enforcement think it's too weak to catch parents who "look the other way" when teens drink in their home while others think it's too broad. Regardless, in 2011 alone, 719 Connecticut residents were cited as Social Hosts; that's an average of 14 per weekend.

One of those charged was Lori Underwood, a New Canaan mother who was reported to have been found hiding in her closet, on the

advice of her daughter, when police raided her daughter's party last August. If true, that's both humiliating and lame. Brothers David and Pablo Castellanos of Greenwich were charged when police found a group of 15 and 16 year olds drinking in their home. Wondering what the 25 and 23 year old brothers were thinking when they invited high school kids to get drunk in their basement kept me up nights.

The deaths of two Ridgefield teens, one 19 years old and one only 16, still haunt Connecticut Representative John Frey (Ridgefield). They were killed in separate accidents driving drunk after attending parties where adults were believed to be present. A third teen committed suicide after the death of his friend. When law enforcement were unable to charge the adults, the Ridgefield Community Coalition, including Chief of Police John Roche and First Selectman Rudy Marconi, invited Frey to a meeting to ask him to help them strengthen the current state law.

So, Frey sponsored a revision – House Bill 5360 – intended to make it easier to catch Social Hosts. It passed both houses this spring and Connecticut's new, harsher law goes into effect October 1, 2012. The new law expands prohibited behavior from knowing teens are drinking on your property to reckless or criminal negligence if they do so without your express permission. The difference means police may charge you as a Social Host even if you truly didn't know it was happening. For example, if the party is loud enough for the neighbors to hear, then you should have checked on it yourself and stopped the drinking.

Be careful, because the penalties have risen dramatically as well. Even first-time offenders will be charged with a class A misdemeanor, fines up to \$2,000 and/or up to a year in jail. Expect record rates of arrests of teens and adults in 2013.

Northern Fairfield County resident Julie Simmons (this is not the parent's real name) is lucky that her daughters' sleepover happened beforehand. She has three popular, smart daughters, the two youngest very close in age. Though she assumed they would want to drink someday, never in her wildest dreams did she expect what happened when the two youngest had a sleepover in middle school. Each girl invited one close friend, and a fifth girl, Jessica (this is not the child's real name), joined them. As Simmons recalls, "I was woken out of a sound sleep" by one daughter around 1am. "We were drinking,

Mom. I'm really sorry." Simmons rushes to check on Jessica in the bathroom. "This girl is more drunk than any person I have ever seen... she's practically unconscious." While Simmons cares for Jessica, she simultaneously assesses the other four girls, who were fine. Simmons reaches Jessica's parents, offers to call 911, but the mother insists on driving over first. The two women could barely carry Jessica down the stairs to the car. "I would guess she was only about 100 pounds, but it was dead weight." From being woken to watching the car pull out of her driveway, lasted approximately 15 minutes.

Of course, there were some difficult conversations that night and over the next 24 hours. Simmons individually questioned the girls and all four agreed that Jessica had instigated the drinking but one of her daughters had found the vodka. Simmons

"five minutes later, the child is passed out and is non-responsive because the blood alcohol concentration was still rising," even though the drinking had stopped. Bruce Koffsky, a criminal defense attorney who practices in Stamford and Manhattan, concurs. Call the parents "immediately. Don't worry about whether those parents [will be upset] that you allowed that child to have vodka. That will pale in comparison to this child having to be intubated...because she's dying of alcohol poisoning."

Under the proposed new law, could Simmons have been charged with reckless or criminal negligence? Koffsky wonders, "Does [reckless] mean you left your vodka collection, your Gray Goose, your Absolut Citron, upstairs in the kids' dressing room?" Maybe, I suggest, it means that the vodka is accessible because it's in the freezer, where I keep mine. Koffsky agrees it's a question

the past three decades, nationwide and in our local area. The decline in teen alcohol use persists in areas with and without Social Host Laws. However, colleges are unable to make a significant dent in undeniably high binge-drinking rates.

This leaves us with three important questions.

First, why do we need a controversial "new" law that penalizes parents for not preventing teens from drinking on their property, if we've been so successful at reducing the incidence of teen drinking without it? The answer may be that we don't. We'd like to hear from you. You can visit [SocialHostLaw.com](http://SocialHostLaw.com) to share your thoughts and join the conversation or just read more about the latest news on underage drinking laws in the U.S.

Second, what are the unintended consequences of Social Host Laws? We're seeing more teen parties in foreclosed homes, luxury

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filled in the other parents the next morning and praised their daughters for handling the crisis well. Jessica's mother also called early to say Jessica had her stomach pumped and was going to be fine, but the ER doctor urged her to sue the Simmons'. She didn't. And Simmons' two youngest daughters were both grounded; the one who found the vodka was grounded the longest. Simmons' conclusion? "It was unbelievably frightening."

Chief Roche believes Simmons did everything right, although he wouldn't recommend waiting until the parent arrives; he suggests you call the parent of the ill child and then immediately call for an ambulance. New Canaan defense attorney Matthew Maddox, who often speaks to community groups about the issues surrounding underage drinking, agrees that if the child is in any distress, don't wait, because, "You don't want parents becoming paramedics." Maddox says he's been involved in cases where an adolescent is intoxicated but not in evident danger, so the host called the parents. However, he recalls,

that needs addressing. "Does 'recklessly' mean that everybody has to have a locked liquor cabinet? Is it going to be like a gun safe?"

Julie Simmons thinks so. "Lock up your liquor cabinet," she advises parents. "I don't think people can be expected to stay up all night... Locking the liquor cabinet would have avoided this situation."

Finally, could Jessica's family have grounds for a lawsuit? Probably not, since Simmons responded quickly, acted responsibly and didn't delay contacting Jessica's parents. However, if her younger daughters had ever been in this situation before or if Simmons knew that Jessica had gotten drunk at someone else's house, she could have been charged as a Social Host because — in the language of the new law — she recklessly disregarded a substantial and unjustifiable risk that it could happen again.

No one wants teens to drink. We especially don't want teens to drink irresponsibly. So, we're happy to share the news that underage drinking rates have been falling steadily over

vacation homes and ones like the thwarted St. Patrick's Day party at an abandoned mill in Ossining. Bush parties are popular in the southwest. Are we driving teen drinking further underground? Why, when in 30 states, parents can legally educate their own kids about how to drink responsibly?

Third, how do we teach our kids to become responsible adults when so many laws require we watch over them like heat-seeking missiles? When our baby-boomlets reach their thirties in ten years, will we find we've raised a generation completely untrained to fend for themselves or will they transcend their shackles and rise above our fears? \*

*H.M. Epstein is a parent advocate seeking to help caring, involved parents navigate the tricky issues of underage drinking and the law. Her goal is to answer the question: How can we protect our families and ourselves if good parents are criminalized when teens disobey their rules? Learn more at [SocialHostLaw.com](http://SocialHostLaw.com) or at [Facebook.com/SocialHostLaws](https://www.facebook.com/SocialHostLaws).*

# WHAT TO DO IF YOU DISCOVER TEENS DRINKING IN YOUR HOME

By H.M. Epstein SocialHostLaw.com

Uh oh. You come home unexpectedly from a boring movie and find dozens of teens staggering and vomiting among the daylilies.

Or maybe you wake up because the bass thrum from the basement stereo is making your headboard vibrate. You discover the small sleepover for three you approved has become a pajama party for twelve girls and a pitcher of Cosmos.

What do you do then?

**The police will tell you that your first call should be to them.** Your child will tell you that you should leave. Your pastor will tell you that you must minister to the sick and ensure that all of the guests are safe from harm. Your defense attorney will say to put him on speed dial.

**Legality. Morality. Practicality.** Choose just one path because that's all you'll have time to do before the situation worsens. Protecting your family, yourself and all the minors simultaneously may not be possible, the way many local Social Host Ordinances and civil liability laws are written. Crisis managers talk about the importance of triage; finding inebriated teens in your home is a crisis. So, here are some triage steps to try, if you discover your home being used by minors as a neighborhood bar.

**Be stealthy.** Don't come in yelling, or even announcing your presence. You have mere seconds to assess the situation. Remember, your goal is not just to stop the drinking; it's to ensure that things aren't worsened by your presence. When parents or police charge in, kids start running. That often leads to terrible accidents.

**How many are there?** When the numbers are overwhelming, you need to call the police. A mom in Westchester County, New York was knocked down by a football player when she tried to make him stop drinking. A former principal in Spokane, Washington was punched and killed by a high school student when he tried to break up a party at an absent neighbor's home. Your kid will be furious with you. Parents of children who get cited for drinking will ostracize you. You may live to regret it, but the point is you'll live and so will all of the unwanted guests.

**Does anyone look asleep or ill?** When in doubt, call 911. If you can't wake them, call 911.

**Are they drinking or drunk?** Kids who are drinking will stop when you ask them to. Kids who are drunk will ignore you or argue with you. If they stop, you then have the luxury of time to assess the situation and determine next steps. If they argue with you, you give them two choices: put down the alcohol or you're calling the police. In either



case, your minimum responsibility under many Social Host Laws is to contact their parents or guardians.

**Did they drive or walk over?** Don't bother asking the unwanted party guests for their car keys. They may lie or have a second set. To ensure the teens' safety and to protect yourself against civil liability, forget the keys; you have to disable the cars. Many sites give advice about pulling fuses but you can't open a car's hood without the keys. Instead, grab a can of spray paint and cover the windshield thickly with paint. It doesn't damage the windshield (but avoid spraying the bodywork), it can't be removed with window washer fluid, and even a drunk won't try to drive blind. It takes time to scrape off the paint. At the very least, it buys you time. It also makes a great natural consequence for the would-be DUI driver.

We're not suggesting this is an easy scenario for anyone to handle. However, with a few deep breaths, a respect for the precarious balancing act that is parenting teens, and a little bit of luck, you — and your daylilies — will both survive.